

**MASTER THESIS**

**STATE MANAGEMENT OF NOTARY OFFICES,  
CASE STUDY OF HAIPHONG CITY, VIETNAM**

**By**

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## **Abstract**

Over nearly 30 years, Vietnam has witnessed the transition of the economy from the centrally planned economy to the market economy, which requires reforms in all fields, especially in the judicial field. Notarization is a judicial support activity, which is identified the necessity to conduct socialization, with the recognition of the coexistence of two forms of notarization practicing organization (notarial bureau and notary office). The case study explored the state management situation in the organization and operation of the notary offices in the city of Haiphong, Vietnam. The research was conducted using qualitative methods and secondary data collected from Haiphong Department of Justice (Judicial Support Division) as well as the system of legal documents and reports from the central to local levels since the Law on Notarization took effect up to now. The research launched the evaluation of the role of the competent state agencies in the organization, operation and development of notary offices, and the orientation and measures to enhance the effectiveness and efficiency of state management in the coming years.

**Keywords:** notarization, notary office, state management, socialization, transitional economy, Haiphong, Vietnam.

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# CHAPTER 1: INTRODUCTION

## 1.1. Research background

The promotion of the state's organizational and operational reform along with the advancement of democracy and the increased law enforcement are important parts of the comprehensive renovation process in Vietnam nowadays. One of the imperative requirements of this issue is the correct identification of the state's roles and functions in the socialist-oriented market economy and in providing public services in order to make the state apparatus streamlined, effective and efficient, ensuring the sustainable development and enhancing the economic competitiveness in terms of globalization and international integration (The 11th National Congress, 2011). The request mentioned above has put forward the demand for the socialization of public services, including the socialization of notarization.

Notarial activities are significantly necessary to maintain law and order in transactions, protect legal rights and interests of parties in the transactions, ensure a stable social order, prevent dispute as well as provide reliable evidence when disputes occur (Tran, Duong, Phan, Nguyen, An, & Do, 2007). Moreover, the comprehensive renovation work of the country is currently bringing new requirements for notarization. *First*, the organizational flexibility is necessary to respond timely to the needs of the people. *Second*, it is to enhance and promote the personal responsibility of notaries in the explicit competitive environment, motivating notaries to be positive, proactive and enthusiastic in their work. *Third*, it is the reduction of the state subsidies as for streamlining the state machinery. *Fourth*, it is also important to separate the state management function and the function of providing public services

in notarization, enhancing the effectiveness and efficiency of the state management while improving the efficiency of notarization (Le T. P., 2005).

Along with the policy of socializing activities as attorney, consultants and judicial expertise, socialization of notarization is a standpoint of the Vietnamese Party and Government at the present, which is particularly evident in the Resolution No. 49-NQ/TW of June 2, 2005 of the Politburo on judicial reform strategy toward 2020 with the contents:

*“Improving public notary institutions. Clearly identifying the scope of public notarization and certification, clearly defining the legal value of notarized documents. Building a model for the state management of public notary services in the view that the State will set up only relevant notarization authorities while exploring appropriate steps to socialize this service gradually in the future.”*

The thought of socialization in notarial activities is one of the highlights of the Law on Notarization (No. 82/2006/QH11) passed by the National Assembly on December 29, 2006, with effect from July 1, 2007. After more than seven years of implementation, notarial activities have achieved positive results and developed professionally with the socialized orientation and the appearance of notary offices operated by professional capacity holders<sup>1</sup>. Notarization activity has overcome significant limitations such as the overloading of notary bureaus<sup>2</sup>, the delimitation between notarization and authentication, and the decentralization of state management of notarization. The inception of notary offices has helped professionalize and

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<sup>1</sup> According to Law on Notarization (No. 82/2006/QH11), notary offices are set up by notaries and operate in the form of private enterprises or partnerships.

<sup>2</sup> According to Law on Notarization (No. 82/2006/QH11), notary bureaus are non-business units under provincial/municipal Justice Services

socialize notarial activities, which is considered as a breakthrough in the reform of notarization in Vietnam (Le Q. H., 2009).

However, the advent of notary offices in parallel with the operation of notary bureaus has raised pressing issues in management while the Law on Notarization cannot anticipate all the problems and difficulties of implementation in practice. Therefore, it can be seen that the state management of notarization is very important and sensitive in the trend of public service socialization, which is necessary to complete based on the proper orientation in accordance with long-term socio-political and economic objectives, ensuring supreme benefits to the people, and efficiency in state management, meanwhile upholding the individual self-responsibility of citizens.

As can be seen, Haiphong is the third largest city in Vietnam and the most important seaport in the northern area with its deep-water anchorage and extensive maritime facilities. It is also the center of economy, culture, education, science and technology of the northern coastal region. With the population of over 1.9 million people, Haiphong has the important strategic position in the socio-economy, technology, security and defense of the northern area and the country. The advantage of deep-water anchorage has created favorable conditions for the shipping industry, which is one of the growth engines in the northern major economic area. Haiphong has many developed industry zones, commercial districts as well as centers of tourism, education, health services and so on of the northern coastal region (Hai Phong Portal, 2012). Therefore, the demand on notarization of contracts and transactions is considerable, which requires public services reform including notarization.

The above significance has put forward the state management of notary offices to theoretical and practical aspects, thereby making reasonable management solutions to

notary offices in Haiphong City, Vietnam. For that reason, the author chose the topics *“State management of notary offices. A case study of Haiphong City, Vietnam”* for the thesis.

## **1.2. Research questions**

The research seeks to answer the following questions:

- What is the role of state management towards the development of notary offices during the initial stage of notarial socialization in Vietnam?
- How to enhance the effectiveness and efficiency of state management of notary offices?

## **1.3. Research objectives**

The aims of the thesis is to clarify theoretical and practical issues of state management of notary offices and to propose solutions to such issue, thus contributing to the goal of organizational and operational reform of the state in general and the goal of judicial reform in particular in the process of building a socialist rule-of-law State of the people, by the people and for the people.

To accomplish the abovementioned objectives, the thesis shall:

- Clarify some theoretical issues of notarization, notary office and state management of notary offices.
- Assess the practical situation as organization, operation and state management of current notary offices in Haiphong.
- Propose solutions to improve state management of notary offices in Haiphong.

## **1.4. Significance of the research**

I conducted this study as a government official in the state management system. Currently, I am working at Haiphong Department of Labour, Invalids and Social

Affairs. In the field of state management, I am particularly interested in the transition of notary service in Vietnam from the Soviet system of totally controlled government undertakings to the socialist market-oriented mechanism. Additionally, the direct attention of leaders of Haiphong city has emphasized that the reform in the field of notarization is such a new problem in the economic transition context of Vietnam, in general and Haiphong city in particular, which requires the intervention of studies to provide insight for policy makers and researchers in the future.

Therefore, this thesis will be the first endeavour in studying the state management of notarization in Vietnam in the early stages of socialized notarization. The reality shows that the shift in economic policy from the centrally planned economy to the market economy has required judicial reforms, including reform in notarization. However, only after 2007, when the Law on Notarization was promulgated and came into force, the coexistence of two models of notarization practicing organization (notary bureau and notary office) has been acknowledged. Thus, socialization of notarization in Vietnam is still a new subject, and there are many shortcomings in the practical implementation.

Haiphong is one of the largest cities in Vietnam, which has witnessed a boom in the economy as well as the growing notarial needs of individuals and organizations. Therefore, the thesis selected Haiphong City as a typical case study to explore the practical state management of notarization in Vietnam.

The thesis is expected to be the first research monograph, which is relatively systematic about state management of notary offices. It can be considered as a reference to improve the quality of notarization in Vietnam in general and Haiphong in particular, satisfying the Party and Government's policy on the socialization of public services consistent with the practical situation.

It should be added that under the Vietnam's context, transitional measures have been called under the caption of socialization so as to convey the conformity with the official agenda for the socialist market economy. Therefore, the concept of socialization is virtually "liberalization", however, in the thesis, I followed the usage of "socialization" as so used in Vietnam.

### **1.5. Methodology**

The thesis was conducted using qualitative method, based on a theoretical basis and the viewpoints of the Party and Government of Vietnam on building socialist rule-of-law of the people, by the people and for the people, in which promotion of administrative and judicial reform is one of the key tasks. The author uses secondary data collected from Haiphong Department of Justice (Judicial Support Division) concerning the organization and operation of notary offices in Haiphong City as well as the system of legal documents and reports issued from the central level to local level since the promulgation of the Law on Notarization (taking effect on 1 July 2007), to conduct a relevant comparison and evaluation in order to clarify the contents of the research study.

To elucidate the nature of state management for notarial activities, I use a variety of legal documents relating to notarization from 1945 to now which is publicized on the website of the Ministry of Justice. Through the systematic evaluation of the legislation, I will point out the changes and progress in view of the state management of notarization. Also, I use the secondary data from the reports related to the notarization practicing organizations in Vietnam to assess the development trends of the sector on a national scale for the period from 2007 to present.

Regarding the case study of Haiphong, I delve to consider legislation system which was issued by Haiphong People's Committee to see the perspectives of state

management at the local level. The flexibility and timeliness of the system of local legislation to the one of the central level will reflect the efficiency and effectiveness of the state management. Besides, I use the secondary data obtained from Haiphong department of Justice to clarify the development and expansion of the notarization practicing organizations. The legal documents and reports were issued during the period from 2007 to the present. Whether the development of the notarial practicing organizations is able to meet the increasing need of individuals and organizations will be the decisive factor to the effectiveness of state management.

## **1.6. Research structure**

The thesis consists of 4 following chapters:

### Chapter 1: Introduction

The Introduction chapter introduces the background of the research, the research questions, and objectives. It also explains what manner the research is designed and conducted.

### Chapter 2: Literature Review

The Literature Review gives existing literature about notary systems in the world and review main characteristics of the Latin notary profession on which Vietnamese notary system is based. In addition, this chapter will review the concept of privatization of notary system and the reforms of the notary professions in some of the former socialist states which have similarities or effects to the notary reform policy in Vietnam.

### Chapter 3: Notarization in Vietnamese context

This chapter will give readers a comprehensive understanding of the notarial system in Vietnam by presenting the concept of notary, notary offices and state management for notary office in Vietnam.

Chapter 4: Status of state management of notary offices in Haiphong, Vietnam.

This chapter evaluates the development trend of notary offices in Haiphong City, their operational effectiveness, and management function of state management agencies.

Chapter 5: Orientations and solutions for improving state management of notary offices

This chapter brings out directions of developing notary offices in the coming years as the master plan of the Government and proposes solutions for bettering state management of notary offices.



## **CHAPTER 2: LITERATURE REVIEW**

The literature review contains four contents. The first one is an overview of notary systems in the world. The second content reviews the main characteristics of the Latin notary profession on which Vietnamese notary system is based. The third section takes a look at the concept of privatization of notary system. In the last section, I will review the reforms of the notary professions in some of the former socialist states.

### **2.1. An overview of notary systems in the world**

Notarization has witnessed a long history of formation and development with the inextricable connection in the development of governments, commerce and society since the days of ancient Egypt (Ready, 2002). Initially, a notary was merely a freelance in society, serving the natural needs and the public's self-protection when setting up the deeds or indentures. Experiencing vicissitudes of history, notarization has demonstrated the stable existence and increasingly important role in social life, which is recognized by governments and becomes an effectively supporting instrument for legal system (Michael, n.d.).

Broadly speaking, the world's notary systems fall into three categories: Latin notary system corresponding to Roman Law (also known as Civil Law); Anglo-Saxon notary system corresponding to Common Law; and Collective notary system which used to be seen in the Socialist's legal system (Sovietique).

The Latin notary is deeply influenced by Roman law, also known as civil law. This notarial system exists in almost all the countries of the European Community (excluding Denmark and the United Kingdom); Africa (former colonies of France); Latin America; Quebec of Canada; Louisiana and Puerto Rico (United States); some Asian countries (Japan, China, Vietnam, Bangladesh, Indonesia, etc.) (Malavet, 1996). Most of the countries, which have civil-law notaries, are members of the

International Union of Latin Notaries (UINL) with the formal membership of 86 countries (World Notaries Network, n.d.).

Reynis & Bechini (2007) showed characteristics of Latin notary as follows:

- The scope of notarization is specifically regulated, as which activity is subject to notarization and which one is not required as prescribed by law.

- The legal validity of notarized documents is very high. These documents are binding on all related parties as a court ruling. In some countries, notaries are also referred to as "contractual judges".

- Notaries are appointed by the State. They may be civil servants or not, but so as to practice the notarial profession, they must be nominated by the State.

The counterpart notarial system of the countries under the Common Law (Anglo-Saxon notary) exists in the following countries: United Kingdom, United States (except for Louisiana and Puerto Rico), Canada (excluding Quebec), South Korea, Singapore, Thailand and Taiwan, etc.

Common Law is relatively flexible as witnesses are more respected than exhibits (Fisher, 2013), and hence, carries the following characteristics:

- The scope of notarization is not clearly defined. For example, contents, acts, forms of documents are not strictly regulated; notarized documents have no binding force on the parties as a court verdict.

- Notary in these countries is a liberal profession and lawyers can concurrently perform as a notary. (Northey, 2010; Cox, 2000)

It is general agreed that the professional nature of notary in Common Law countries is not high compared to Civil Law system. (Reynis & Bechini, 2007; Nahuis, Noailly, Aouragh, & Verbruggen, 2005; Tavares & Rodrigues, 2011)

A comparison of the above notarial systems has revealed that despite the difference between Latin notary and Anglo-Saxon notary in the organization, operation and notarization procedures, the conception of notarization in these two systems is similar. A notary is regarded as a liberal profession in both systems; notaries discharge their functions independently and take individual responsibility for their acts. However, to be a unique profession, it requires notaries to have legal qualifications and professional skills accredited by the State to ensure the authenticity of complicated and diversified contracts. In short, notaries are appointed by the State or recognized under statutory conditions and operate under the regime of notarization practice.

It can be clearly seen in the implementation of the law on notarization of the following countries:

The French notarial system, which is a typical example of Latin Notaries, has stipulated in Article 1 of Ordinance No. 45-2500 dated 2 November 1945 on regulations of the Republic notarized legal provisions as follows:

*“Notaries are the public functionaries established to receive all acts and contracts to which the parties must or wish to invest with the character of authenticity attached to acts of public authority, and to ensure the date of them and to keep them on deposit and to delivery exemplifications and certified copies of them.”*

In the UK, which follows Anglo-Saxon notary, the authority to appoint notaries is found in the Ecclesiastical Licences Act 1533, the Public Notaries Act 1801, the Public Notaries Act 1833, the Public Notaries Act 1843, and the Courts and Legal Services Act 1990. Accordingly, the notary’s function is to adapt Notarial Acts and Authentic Acts, including engrossing, reviewing and explanation of legal deeds. These Notarial Acts are mainly executed in England and Wales for use everywhere

else worldwide (The Law Society of Scotland; College of Notaries Northern Ireland, n.d.).

Meanwhile, in Collective notarial system, a notary is not considered as an independent profession. Collective Notary has previously existed in former socialist countries and thrived during the 1970s to 1990, including the Soviet Union, Poland, East Germany, Bulgaria, Hungary, Romania, Cuba, China and Vietnam (Notariat, n.d.).

Collective notary system means state notarization in which notaries are public servants; notary offices are state agencies established as administrative units. Acts of notaries are explicitly determined by listing acts that notaries can perform, meanwhile the form of notarized documents are not specifically provided; especially there is a very little attention to provisions on preservation of notarial archive; legal validity of notarized documents is not seriously taken; the roles and responsibilities of notaries, especially material liability, are not mentioned. They are only accountable to the higher state administrative agencies without liability for related parties.

After the collapse of the Soviet Union and socialist countries, most countries have gradually transformed to the pattern of Latin Notary, which means notary is determined to be a liberal profession placed under the State's management and is proceeding gradually the reform of converting from public notary to private notary (Shaw, 2004). In Poland, on the 14th of February 1991 the Law of Notaries Act was passed, restoring the function of the notary as the public confidence person and independent profession. Accordingly, pursuant to Article 1 of this law, notaries shall be appointed to conduct legal transactions, which the parties to such transactions have to or wish to notarize (legal transactions or notarial services). Within the scope of their authorization, a notary shall act as a person of public trust, entitled to the

protection guaranteed to public officers (Legal professions - Poland, 2007). Vietnam was also influenced by the collective notary system until the promulgation of Law on Notarization (2006), which has brought the nation's notarial institutions closer to the international practice of Latin Notary.

It can be clearly seen the superiority of the liberal profession model over public notary model as the prominence and promotion of personal responsibility of notaries, creating a healthy competition mechanism, generating driving force for notaries to promote positiveness, raising the sense of initiative in their operations, unburdening the state's subsidies, streamlining the state apparatus and separating functions of state management with functions of providing public services in the field of notary. This organizational model not only saves the state budget but also raises national budget through taxes of notaries. In terms of organization and operation, liberal notary model creates the flexibility of the organization, satisfying the notarization needs of organizations and individuals.

## **2.2. Latin style notary**

In this part, I will review the main typical features of the Latin notary profession on which Vietnamese notary system is based.

Malavet (1996) gave an understanding that Latin notary is a private legal professional, who advises and engrosses legal documents for private parties, maintains a permanent record of the transaction and is delegated with the authentication power by the state.

The Latin notary profession is existing in most countries with a civil law system. The counterpart of Latin notary system is Common Law notary which has a system of "notary public", popular in the US, England and most of Scandinavian countries. The main difference of these two notary system is their status of profession (Nahuis,

Noailly, Aouragh, & Verbruggen, 2005). In the Civil law system, notary is more dominant than the one in Common law. Civil law notary is considered as an unprejudiced legal expert whose engrossed documents are admissible in court without any requirement of further proof. On the contrary, Common law notary is less qualified and enjoy less statutory power. It means he does not have to take care of interests of other concerned parties in transactions or interests of the third parties. In this sense, a notary is comparatively equivalent to a lawyer (Malavet, 1996).

Civil law notaries are appointed by authorities, however, unlike other public servants, they do not get paid by authorities and operate their function as entrepreneurs. The notarial fees which they can charge for service are usually fixed by central authority or professional organization (Nahuis, Noailly, Aouragh, & Verbruggen, 2005).

Collantes (2005) confirmed the important role of civil law notaries which is a preventive legal security. The presence of civil law has decreased transaction costs among contract parties or the third parties. In addition, stemming from the probative value of notarial instruments, civil law system help decrease the cost of litigation.

Given the important role of civil law notary, in most countries, there is a strict regulation such as rules on appointments, location of establishment and notarial fees. Inevitably, this leaves very little room for competition among notaries. They mainly compete by their own reputation and service quality (Nahuis, Noailly, Aouragh, & Verbruggen, 2005).

The literature in Latin style notary has revealed that the notary system in Vietnam carries all the mentioned characteristics of Latin notary system in the world. The concept and features of notary in the context of Vietnamese law will be further analyzed in Chapter 3 of the thesis.

### **2.3. Privatization of notary system**

According to Savas (2000), privatization means the transfer of ownership and employment status from state control to private hands. In this sense, privatization also means “denationalization” or “destatization”.

Van der Bergh & Montangie (2006) and Collantes (2005) reckoned that Latin notary profession has been highly regulated by statute and the absence of government intervention would deteriorate the preventive legal security associated with notary services. Nevertheless, notary profession has been shifted towards the tendency of a significant deregulation which is largely implemented by the OECD (2007) and the European Commission (European Commission, 2005; Patterson, Fink, & Ogus, 2003).

Tavares & Rodrigues (2011) described the privatization reform of Portuguese notary system which is implemented in 2004 by the Government, led by Prime Minister Durao Barroso. This reform deregulated the heavily regulated notary profession in Portugal. Thus, notaries who had been working for State were given the opportunity to privatize their firms. This resulted in the decrease of the number of civil servants in Portugal. Notarial fees remained largely regulated by statute during the first stage of liberalization (Portaria No. 385/2004). But after July 2008, there was a liberalization of notarial fees for all notary acts. Hence, a competition of notary profession appears and is available in the market. However, Tavares & Rodrigues (2011) also noted that advertising is strictly forbidden. What notaries can do for increasing their competition is to publicize operation hours, location and academic training. It is safe to say that there is still a little room for competition even privatization reform is applied.

A unique case is found in the notary system of the Netherland where the Government enforced the 1999 Notary Act to enhance its competition. Nicole, Joëlle,

& Ben (2005) provided the description of the liberalization policy that converted the Netherland's notary profession into one of the least regulated in Europe. Before the Act, like most of Latin notary countries, the market for notarial services of the Netherland was characterized by strictly regulated provisions as fixed fees and establishment of notaries. The authorities expected that the reform Act 1999 could bring positive effects in the competition of notary service. However, Nicole, Joëlle, & Ben (2005) and Nahuis, Noailly, Aouragh, & Verbruggen (2005) found that not many of authorities' expectations were materialized. Customers did not benefit from the change of fees because the average notarial fees decreased slightly but still included high-profit margins. Additionally, the total number of notaries remained fixed, which could not create a significant increase in competition. (Nahuis, Noailly, Aouragh, & Verbruggen, Competition and quality in the notary profession, 2005) also found that the competition has created an adverse effect on the quality of notary services.

#### **2.4. Reforms of the notary professions in the former socialist states**

In this part, I will review the reforms of notary profession in the former socialist states. Because Vietnamese notary service has been heavily influenced by the Soviet mechanism, which is totally under the state control, there must be similarities in the notary reform of Vietnam and that of former socialist states.

Shaw (2004) analyzed the post-communist transformation of notary profession in 3 former member states of the Soviet Bloc in Central Europe: Former German Democratic Republic (which is currently 5 federal states within united German), Poland and Hungary. Thus, there was a transformation into the status of the liberal profession after 4 decades of socialist state employment. In the former communist bloc countries, notary profession referred to the concept of "state notariats". State notaries were "government officials working in the lower courts and charged with



certain functions in the non-contentious as well as the contentious judiciaries”. They discharged function mainly in the area of property and inheritance law.

According to Shaw (2004), there was a tendency of reforms in the member states of the Soviet Bloc from the late 1980s onward. Accordingly, governments of former Soviet states implemented a wide-ranging adjustment to their legal systems including notary profession in order to fit the requirements of democratic societies operating within a free market economy and governed by the rule of law. Hence, notary is transformed from state notariat to independent profession. The authorities gave the state notaries the freedom to establish private offices.

By analysing the cases of Germany Democratic Public, Poland and Hungary, Shaw (2004) found that as soon as the transition to democracy, to the rule of law, and, especially, to a free market economy had been came to force, the reform of notary profession witnessed amazing swiftness and lack of controversy in the legislative base. The management of the process has demonstrated its effectiveness and efficiency.

The reform is also found in the notary system of Russia. The first notary license was issued in the Russian Federation in 1993. The decades of state monopoly was followed by a private practice notary system. According to Mishina (2013), this reform was recognized as the most successful reform in Russia in the last twenty years.

Since the reform, a private practice notary system started to operate alongside the public notary system. The functions, as well as the qualifying requirements and standards for public and private notaries were identical. Mishina (2013) also pointed out that private notaries' career opportunities became so attractive that an enormous number of notaries rushed into the private sector. Hence, the private notary system in

Russia not only solved the problem of lines in notary's offices but also radically changed the public's perception of the notary profession and dramatically enhanced its prestige. The notary profession has turned from the least important job of law profession into one of the most prestigious legal jobs in existence of Russia today.

The literature has revealed similarities in the reform policy of notary system in the former socialist countries. In Vietnam, the transformation of the notary system from a state monopoly to a privatization policy (also known as “*socialization*” in Vietnamese legal documents) was introduced in 2007. Like the process of privatization of the other Latin notary countries, in the early stage, in Vietnam, both formal centrally controlled system and new private notary system are coexisting. The formal one is notary bureau and the latter is notary office operated by professional capacity holders. This issue will be considered in more detail in Chapter 3 of the thesis.

### **CHAPTER 3: NOTARIZATION IN VIETNAMESE CONTEXT**

With the hope of giving readers a comprehensive understanding of the notarial system in Vietnam, this chapter will present the concept of notary, notary offices and state management for notary office in Vietnam. The concepts and analysis are reviewed on the basis of the existing legislation. This chapter is divided in 3 parts: 1)

Definitions of notary. 2) Definition and features of notary office. 3) State management of notary office.

### **3.1. Definitions of notary**

The determination of the notarial concept is the key issue of notarial activities that play an extremely important role in theory and practice as it not only affects the organizational structure, operational mechanisms but also becomes a basis to define the scopes, contents, rights and obligations of individuals and organizations delegated to perform state management functions.

Notary as a legal institution in Vietnam has been formed quite early, since the 1930s under French colonial empire, but only after 1987, the term "notary" has just begun to be widely disseminated (Tran, 2002). So far, there have been five different concepts of notary serving the state management of notarization as shown in legal documents. Specifically as follows:

- Circular No. 574/QLTPK dated 10 October 1987 of the Ministry of Justice is an especially significant document in furthering state notarization system in Vietnam, in which *“State notarization is a state activity in order to help citizens, agencies, organizations establish and attest legal documents, legalize those documents and make them have legitimate force. By the above operation, state notarization creates legal indemnify to protect the rights and lawful interests of citizens, agencies and organizations conforming the Constitution and laws of the Socialist Republic of Vietnam, to prevent violations of law, to help resolve disputes favorably, contributing to the strengthening of the socialist law enforcement”*.

For the first time since the declaration of the independent Democratic Republic of Vietnam (2 September 1945), the concept of state notarization was launched in Vietnam, which was an innovative landmark in legal thinking, to meet the

requirements of the economic transition in the early stage. However, given the first legal document on notarization in the first period renovation, this circular had unavoidable limitations such as the lack of identification of subjects, objects and contents of notarial activities and the unclear distinction between notarial activities and activities of other state agencies.

The formulation process of a socialist-oriented market economy has increased both in number and scale of civil, economic and commercial transactions, posing progressive demand for notarization. Thus, within 10 years (1991-2000), the Government promulgated three decrees on the organization and operation of state notarization, namely: Decree No. 45/HDBT of the Council of Ministers (now the Government) dated 27 February 1991; Decree No. 31/CP of the Government dated 18 May 1996 and Decree No. 75/2000/ND-CP dated 8 December 2000 of the Government on notarization and authentication.

Under Decree No. 45/HDBT, state notarization is determined as follows:

*“Notarization is the certification of the authenticity of the contracts and documents in accordance with the provisions of law with a view to protecting the legitimate rights and interests of the citizens and State agencies, socio-economic organizations, and contributing to the prevention of violation of law and the strengthening of the socialist law enforcement.*

*The contracts and documents, which have been certified, serve as a proof of evidence.”*

Then, in Decree No. 31/CP, state notarization is identified as follows:

*“Notarization is the certification of the authenticity of the contracts and documents in accordance with the provisions of law with a view to protecting the legitimate rights and interests of the citizens and State agencies, socio-economic organizations,*

*and contributing to the prevention of violation of law and the strengthening of the socialist law enforcement.*

*The contracts and documents, which have been certified by the State Notary Public or the authorized People's Committee, shall be legally valid unless declared void by the People's Court."*

Compared with Circular No. 574/QLTPK, the concept of notarization in these two decrees is more clearly specified. Otherwise, by comparing the Decree No. 45/HDBT with Decree 31/CP, the latter one has the initial discernment between notarization acts and authentication acts. However, the legal implications of notarization acts and authentication acts have not been discriminated. The term "*certification of the authenticity of the contracts and documents*" in both decrees is too general, hard to understand and easy to cause arbitrary and different consequences in notary practices.

Under the Decree No. 75/2000/ND-CP, the concept of notarization is distinguished from the one of authentication. Notarization concept in this Decree is identified much closer with the general conception of the world. According to this decree, "*Notarization means the certification by the Notary Public offices of the truthfulness of the contracts already entered or other transactions already established in civil, economic, commercial and other social relations and its performance of other tasks under the provisions of this Decree.*"

Notably, this Decree has a plain delimitation between the concept of notarization and authentication than the previous decrees, in which the nature of notarial acts is "*certification of the truthfulness of the contracts*"; meanwhile authentication is just "*the confirmation of the duplication or photocopying of papers, contracts, transactions and signatures of individuals*" (Article 2, Clause 2). Thus, according to the above provisions, notarization is the establishment of a legal validity to

documents, contracts, and authentication is merely the duplication of documents and contracts. Additionally, in essence, notarization is a legal service processed by notaries; meanwhile, authentication is an activity that civil servants from state agencies attest to the duplication of documents or the citizens' signature.

Law on notarization (2006) stipulates that: *“Notarization means an act whereby a notary certifies the authenticity and legality of written contracts or other transactions subject to notarization as prescribed by law or at the request of individuals or organizations of their own free will.”*

Law on notarization (2014) stipulates that: *“Notarization means the written certification by a notary of a notary practice organization of the authenticity and lawfulness of a contract or another civil transaction or of the accuracy, lawfulness and conformity with social ethics of the Vietnamese or foreign-language translation of a paper or document which is prescribed by law or voluntarily requested by an individual or organization to be notarized.”*

It can be seen that the concept of notarization is related to the changes of Vietnam's society. At different stages of the development, the concept of notarization has certain modifications. These changes reflect the State's viewpoints of notarization as well as the economic, cultural, social development level, but ultimately the nature and purpose of the acts remain unchanged.

Besides, considering the provisions on the functions and responsibilities of notaries in the legal documents of other countries in the world, the concept of notarization has the following similar points:

- The subject of notarization activities is the notary.
- Notarization is to engross and certificate (affirm, authenticate) contracts and transactions.

- The legal significance of notarial activities is to ensure the validity of implementation for contracts and transactions to prevent disputes and provide evidence if litigation occurs.

The above analysis has shown that notarization is a social activity with a role as a witness to ensure openness, transparency and objectivity of the indenture and to prevent disputes and swindle. Hence, in the early stages of notarization history, notarization is originated from a self-defense demand when people participate in contracts and transactions rather than from the needs of the state management. Thus, notarization is a profound social activity.

On the other hand, the key role of notarization is to support citizens and protect the rights and legitimate interests of citizens and organizations in civil, economic and commercial transactions; to prevent disputes and law violations; to support state management; to ensure a stable social order and promote the development of civil, economic and commercial exchanges; to support justice through providing evidence for trial operation (Collantes, 2005). Therefore, a notary is a profession with specialization and professionalization of serving the fundamental interests of the society and community. With such an important role, notarization has become the object of state management. In some countries, in certain historical conditions, notarization is considered as “*services supplied in the exercise of governmental authority*”. (Council for Trade in Services - WTO, 1998)

Thus, the nature of notarization is a public service activity. With professional expertise, by consulting, drafting and certifying contracts and documents, notary provides a service to ensure legal safety for citizens and organizations participating in civil, economic and commercial transaction.

The above confirmation of the nature of notarization allows us to see the following characteristics: Notarization is a social-professional activity instead of a typical character of state power. In terms of organization, notarization should be defined as a professional organization rather than an administrative unit or an administrative judiciary unit.

Thus, to ensure consistency, harmonization and compatibility with the notarization concept of the world and to pave the way for the effective development of notarization and promoting the role of notarization in the socialist-oriented market economy in Vietnam today, notarization should be interpreted as follows: *Notarization is an act of notaries establishing and certifying the authenticity of transactions in order to ensure legal safety for parties participating in the transactions and to prevent disputes and violations of law. Notarized documents have the validity of implementation and evidence.*

## **3.2. Concept and features of notary office**

### ***3.2.1. Concept of notary office***

The concept of notary office (private notary office) has appeared for a long time in the world, while in Vietnam, it just appeared after the Law on Notarization (2006) came into force. Since then, Vietnam has acknowledged the operation of notary office, which coexists alongside the notary bureau (notary public office) and is one of two forms of notarization practicing organization specified in Article 23 of the Law on Notarization.

The introduction of the Law on Notarization (2006) with the reorganization of competence, functions and responsibilities of authorized notary practice organizations as well as the regularization of notary office model, has marked an important step in state management of notarial activities in Vietnam today, which is an pivotal



landmark in the field of notarization. Law on Notarization is the legal basis for the State in managing civil transactions and promoting socialization of notarial activities.

Tran, Duong, Phan, Nguyen, An, & Do (2007) presented the reasons for the establishment of the notary offices in Vietnam since 2007 as follows:

- The practical situation of notarial activities showed that the need for notarization of organizations and individuals was increasing rapidly, while the development of the notary public offices could not keep pace with, leading to overload. Notaries were public officials, so the development of human resources in this field faced many difficulties due to lack of the public staff, expenses, facilities, and thereby the notarization practicing organizations did not keep up with the growth in notarial demand for organizations and individuals. At the same time, implementation of the socialization policy of notarization was put forward in Resolution No. 49-NQ/ TW of the Politburo as *“Building a model for the state management of public notary services in the view that the State will set up only relevant notarization authorities, while exploring appropriate steps to socialise this service gradually in the future.”*

- Since the country’s economy came to be transferred from the centralized bureaucracy to the market economy, it was necessary to reform public services in accordance with socialization, which was accordingly posed in the Tenth National Congress (Communist Party of Vietnam, 2006). The State should not embrace all the fields except for supreme activities but must become “midwife” for other activities on the basis of established policies and laws.

- Notary offices are established by notaries who are not state employees; this provision is in accordance with the Latin notary and consistent with the development trend of many countries in the world. Accordingly, notaries are not civil servants but appointed and dismissed by the State. Notary offices are not state administrative

agencies. This transformation is also seen in some countries where coexist both private notary offices and public notary offices as China, Russia, and Poland.

Stemming from the above reasons, the Law on Notarization (2006) defined notary office in Article 26 as follows:

*“1. Notary offices are set up by notaries.*

*A notary office set up by a notary is organized and operates in the form of a **private enterprise**. A notary office set up by two or more notaries and operates in the form of a **partnership**.*

*The at-law representative of a notary office is the chief of the office, who must be a notary.*

*2. A notary office has its own head office, seal and bank account; operates on the principle of financial autonomy with funds contributed by notaries, notarization charges and remunerations and other lawful revenues.*

*The Government shall provide for seals of notary offices.*

*3. The name of a notary office is selected by the notary(ies) but must include the phrase "notarial office" (Van phong cong chung), must not be identical to or cause confusion with the name of another notarization practice organization, must not contain words or symbols in violation of the historical, cultural and moral traditions and fine customs of the nation.”*

Meanwhile, the Law on Notarization (2014) has modified stipulations of notary office as prescribed in Article 22 as follows:

*“1. Notary offices shall be organized and operate in accordance with this Law and other relevant legal documents concerning **partnerships**.*

*A notary office must have **at least two notaries** being its partners. Notary offices have no capital contributors.*

*2. The at-law representative of a notary office shall act as its head. The head of a notary office must be a notary who is its partner and has practiced notarization for at least 2 years.*

...

*4. Notary offices must have head offices satisfying the conditions prescribed by the Government.*

...

*5. Notary offices shall use seals bearing no national emblem. Notary offices may have their seals carved and use them after obtaining establishment permission decisions. Procedures and dossiers of request for permission for seal carving and management and use of seals of notary offices must comply with the law on seals.”*

So, compared to the first Law on Notarization, the latter one only allows a notary office operating in the form of a partnership of at least 2 notaries. Notary offices established by single notaries under the first law have to be converted into notary offices under new provisions after 24 months since the new law took effect, otherwise, provincial-level People’s Committees will revoke their establishment decisions and provincial-level Justice Departments shall revoke their notarization operation registration papers<sup>3</sup>.

There is no doubt that the establishment of notary offices has marked a development of socialization and elimination of the state monopoly in the field of notarization. In that process, the State phased out gradually the directly providing of notary services, proceeding to transfer to non-state units. The State just plays a unique role in state management. Since this is an entirely new model without precedent, organization and management could not avoid shortcomings. Despite many

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<sup>3</sup> See Article 79, Law on Notarization 2014 (No. 53/2014/QH13) regarding transitional provisions.

difficulties in the organization and operation in the early stages of the transition of the country's economy, notary offices have apparently contributed to creating a legal environment for civil, economic and commercial transactions, preventing dispute and law violations and providing stability to society. More importantly, the introduction of notary offices helps expand democracy, create conditions for people to make sense of using the legal tools and lawful measures to protect themselves in civil life and raise awareness and accountability in joining civil, economic and commercial transactions.

### ***3.2.2. Features of notary office***

#### **Organization**

As stipulated in Article 22 of the Law on Notarization (2014), notary office is a public service organization established by at least two notaries. The rights and obligations of notary office are also stipulated in the Law on Notarization and the legal documents concerned.

#### **Operation**

Operation of notary office embodies both civil authority (on behalf of the State and for the sake of the State) and characteristic of public service (aiming to better serving for organizations and individuals who wish for notarization, on a consistent basis with the interests of the whole society). Public service characteristic of notary office is aimed at three benefits:

- Benefits of the State: The birth of the notary offices has not only helped ease the State's burden but also promoted the resources in society, contributing to strengthening the socialist legislation.

- Benefits of the parties joining transaction: notary offices have helped organizations and individuals perform their transactions favorably; and simultaneously protect the legitimate interests of the parties joining the transaction.

- Benefits of notary offices: Notary offices discharging their functions can collect notarization charge and remuneration as prescribed.

### **Financing**

Notary offices operate on the principle of self-financing by funds contributed by notaries, notarization charge, remuneration and other lawful sources, including:

- Funds contributed by notaries: According to the Law on Enterprise
- Notarization charge: Notarization charges include the charge for notarizing contracts, transactions or translations, the charge for preserving testaments and the charge for granting copies of notarized documents.
- Notarization remuneration: The charge is collected to draft contracts or transactions, typewrite or make copies, translate papers or documents, or perform other notarial jobs as requesters wish. The remuneration is determined by notary offices for each task, which must not exceed the ceiling rate of notarization remuneration promulgated by the provincial-level People's Committee.
- Other revenues are collected from the request such as verification proposal, appraisal or notarization outside the office.

### **Notarial Activity is a public service**

The term “privatization” of notaries is used widely in civil law countries, which means “the transfer of ownership and employment status from the state to private hands” (Tavares & Rodrigues, 2011; Savas, 2000). However, socialization of notarization in Vietnam is neither “privatization of notarization” nor “transfer of notarial function from the state to anyone in society”. Notarial activity is a public service as it serves directly to the essential common interests, fundamental rights and duties of citizens and organizations; and performed directly by the State or transferred to the private sector to ensure social order and justice. Despite not being a public

administrative activity, notarization contributes positively to the state management of contracts and transactions. In the conditions of market economy, when the civil and commercial relations increase incessantly, the presence of the notary offices is extremely essential, contributing to sharing the overloading of notary bureaus and at the same time creating a healthy competition for this field. Previously, as notarization was totally exclusive, the long queues in front of the notary bureaus were routine, which caused annoyance to people. The spread of qualified notary offices has significantly improved the quality of notarial activities in particular and public services in general.

### **3.3. State management of notary office**

#### ***3.3.1. Concept of state management***

In broad meaning, state management is the organization and execution of state apparatus; the intervention and organization of state power in terms of legislation, execution and judiciary. In this sense, the state management is the operation of above mentioned three state agency systems: Legislature, Executive Body and Judiciary Body. According to National Academy of Public Administration (2011), state management consists of the following characteristics:

- The subjects of the state management are agencies and civil servants in the state apparatus vested state power including legislative, executive and judicial power.
- Objects of state management are all individuals and organizations within the national territory.
- State management is comprehensive in all fields of social life such as politics, economy, culture, society, security, defense and diplomacy.
- The objective of state administration is to serve the people and maintain stability and sustainable development in society.

In the narrow sense, state management is primarily an organizational and operational process of state administrative agencies for social processes and people's behavior under the law to achieve goals and tasks of the State. Simultaneously, the state agencies also perform executive, operational and administrative activities to build organizational apparatus and strengthen the internal regime, such as making a decision on establishment, splitting or merger of organizational units under its apparatus; promotion, commendation and reward and discipline of officials; issuance of internal work regulations. State management in the narrow sense is synonymous with the concept of public administration with the following characteristics:

*Firstly*, public administration is an activity of state power.

State power in state administration in the first instance is shown by the fact that competent state agencies express the state's will through certain means in which the most fundamental and especially important one is documents used for public administration. By issuing these documents, state agencies express their will in the form of guidelines, policies, and laws to orient the building and application of law; in the form of particular mandates to apply the law in practice, directly exercise the rights and obligations of the parties joining the management relationship and ensure the consistency and systematization of the state administrative apparatus.

*Secondly*, the state administration is carried out by entities having executive powers.

Generally, the state has three powers: legislation, executive, and judiciary, in which the executive power primarily belongs to the state administrative agencies.

*Thirdly*, the state administration is a consistent activity organized closely.

To ensure the legality of execution, the apparatus of executive agencies is organized into one unified block from the central to local levels, led by the

Government, so that the operation of the apparatus is directed and administered, ensuring the common benefits of the whole country and the alignment and coordination between localities to create synergy and avoid the partial differentiation between different localities or regionals. However, because each local unit has its uniqueness about socio-economic conditions, so as to maximize the elements of each locality and to create creative dynamism in governance, the administrative apparatus is also to shift towards decentralization, handing over authority and raising the sense of creative initiative of local authorities.

***Fourthly***, the state administration has executive and operational nature.

The executive and operational nature of state administration is shown by the fact that these activities are conducted on the basis of law and aims to implement the law. Even though to be an actively creative activity of state administrative agencies, these activities would not be beyond the legal framework.

State management is to exercise state power as legislation and judiciary to manage all fields of social life. The feature of organization, the strategic plans and target programs constitute the exclusive power of state management. Particularly, state management in Vietnam has a principle of democratic centralism.

### ***3.3.2. Definition, features, principles and contents of state management of notary office***

#### ***3.3.2.1. Definition***

Since the inception of notary offices, notarization has been known as a legal service activity to ensure the legality of transactions. Hence, if the state does not have appropriate management policies, notarization activity may imperceptibly become a tool abetting for law violations. In fact, after the massive establishment of notary



offices without master plan, notarization itself was virtually a new field, so there have been huge consequences through the past years.

*It can be understood that state management of notary offices is an activity that the State employs measures and tools to exercise the State's influence on the field of notarization in order to function properly notary office system in accordance with the State's direction and objectives.*

In the recent years, the activities of notary offices in Vietnam have made a positive contribution to socio-economic development of the country, affirming more and more clearly the critical role of notarization in social life and satisfying the growing demand of notarization of the people in the socialist-oriented market economy. At the same time, it is an effective tool for state management, ensuring legal security for transactions, contributing positively to the prevention of disputes and violations of law, and strengthening socialist legislation.

#### ***3.3.2.2. Features of state management of notary office***

***State management of notary offices is to ensure the stability and development of notary offices towards socialization direction.***

With the specialized roles, functions and position, notarization practicing organizations must bring stability and sustainable development. Unlike the development of other public services, the development of notarization practicing organizations needs a regulation, distribution and control according to a plan, especially after socialization policy of notarization. Therefore, it is necessary to make a development plan for notarization practicing organization network as well as to perform state management of notarization to ensure that notarization practicing organizations are reasonably established and distributed, satisfying the notarization requirements of people notaries.

The goal of socialization of notarization is to develop notarization network, eliminate the plurality of notary function of administrative agencies and ultimately improve the quality of public services. Social reform associated with justice reform is one of the top fields of primary concern. In case the State loosens its management function, the consequences would be far-reaching. The practice has proved that due to the lack of a consistent legal system in the application and the missing of a good archive bank, there have been many disputes arising from notarization activities. This once again confirms the particularly important role of notary offices in the current socio-economic development of Vietnam. Notary office model has conveyed the state's innovation will and contributed practically to the building of notarization policy in accordance with the Resolution of the 10<sup>th</sup> National Congress of the Communist Party of Vietnam: *“To build and perfect the policy system, to ensure the supply of essential public services and the equality for all people”, “To innovate management mechanisms and modes of providing public services”, “To promote the potentials, intelligence and material resources of the people, of the whole society alongside with the State to solve social problems and care for the development of public services”* (Communist Party of Vietnam, 2006).

The socialization of notarial services also means that it is necessary to improve the responsibility of state administrative agencies in providing these activities. After the establishment of notary offices, the objects of state management are not only notary bureaus but also notary offices. State management of notary offices is associated with the regulations on establishment standards and approval of notary offices, appointment of notaries and supervision, inspection and evaluation of notarial activities.

***State administration of notary offices is to ensure the authenticity, legality and validity of the notarized documents.***

With the role of certification of authenticity, notarization plays an active role in preventing disputes of contracts and transactions. Therefore, notarized documents are pieces of evidence at a court and legal basis for establishing legal ownership to the parties involved (for example, notarized documents of contracts for house purchase and conveyance of land use rights are basis for the land registration agencies to issue title deeds of houses, land). Besides, notaries also have the advisory function. Notaries advise a notarization requester legal proceeding in notarial activities (other than lawyers). Notarial activities bring about huge revenues to the state budget.

It can be said that notarization covers almost all aspects of life and is associated with each individual's life from the cradle to the grave to ensure social transactions developing safely and sustainably. The State in the market economy needs to establish and protect private property rights as well as the right to enjoy the economic benefits derived from the use of such proprietary rights through notarization.

Notarized document is a legal framework to protect the legitimate rights and interests of citizens and organizations, in accordance with the Constitution and law, to prevent violations of law, risks and disputes; or in case these disputes occur, the authorized state agencies base on notarized documents to settle. Notarized instruments serve as a proof of evidence and notaries, who are appointed by the State, are responsible under the law for transactions and contracts certified by themselves, therefore, they are enforceable by the concerned parties.

***State administration of notary offices is to ensure that the operation of notary offices is within the scope prescribed by law and does not contravene the law and social ethics.***

State management plays a role in orienting the development of notarization. Given that the nature of the notarization is a civil authorized activity, notarization is an activity delegated by the State to certify the legality and authenticity of contracts and transactions. Therefore, the determination of the scope of the notarization activities or the determination of competencies of notary offices is significantly necessary for the state management of notary offices, to prevent irregularities during their operation.

The determinations of the notarization scope in different countries are not the same, depending on the conditions and circumstances of each country. However, there are two ways. First, the State lists specifically all possible notarial acts, which was applied in the former socialist countries. In another way, the State determines the scope (framework) and then stipulates mandatory notarization acts through the legislation (For example in the UK, France, Germany).

In Vietnam, the practice of notarization since the promulgation of the Decree 45/HDBT has demonstrated the growing development of notarization. On one hand, the development of the market economy has facilitated the diversity of economic and commercial relations. On the other hand, the legal awareness of citizens about their rights and legal obligations in civil relations has considerably increased. The purpose of *“protecting the legitimate rights and interests of the citizens and State agencies, socio-economic organizations, and contributing to the prevention of violation of law and the strengthening of the socialist law enforcement”* (Article 1), has demonstrated a truth that, in any field, to achieve success, the first factor is to identify the purpose of that activity. In the area of notarization, the determination whether the scope expands or narrows depends on the needs of state management in specific stages.

In the current period, with the dynamic development of the market economy and international economic integration, the role of the notarization is becoming more

important, helping the State better the management of transactions. Law on Notarization (2006) has made the breakthrough in expanding the scope of notarization, in the direction that notary offices are authorized to certify contracts or transactions subject to notarization as prescribed by law or at the request of individuals or organizations of their free will. Additionally, Law on Notarization (2014) has supplemented that notaries afford to certificate the Vietnamese or foreign-language translation of a paper or document that is prescribed by law or voluntarily requested by an individual or organization. These provisions have shown the progress and legality. Accordingly, the verification whether the purpose and contents of notarized contracts do not violate the law and are not contrary to social morality is the responsibility of notary offices. The State will apply the severe legal sanction on notaries contravening against law, which requires notaries both high professionalism and professional morality.

Notaries of notary offices are appointed by the Minister of Justice to practice notarization as prescribed by law. Notaries are not responsible to the administrative agencies or the head of notary offices but take responsibility for the law for notarized documents. Notaries have the operational independence, so in this respect, notaries are not dependent on their superiors. The law does not allow either the management agencies or notary offices' heads to impose administrative orders or intervene in notaries' operation. To ensure that notaries do exactly as prescribed by law, notary offices must guarantee by buying professional liability insurance. However, the regulations related to the form or compensation of insurance are not virtually stipulated in the above mentioned legal documents.

### ***3.3.2.3. Principles of state management of notary offices***

***The principle of ensuring the state management of organization and operation of notary offices***

This principle is manifested as follows: Government direct unified state management of notary offices; The Ministry of Justice is responsible to the Government for implementing the state management of notary offices nationwide; Provincial-level People's Committees perform state management of notary offices in localities.

***The principle of ensuring the independence and self-responsibility of notaries in discharging notarial activities***

In Vietnam today, notarization is an activity organized and managed by the State. Yet the notarial acts are adapted independently by notaries without control and imposition of any organization or individual, hence, notaries must take personal responsibility before law for the jobs they perform. Under current regulations, the notary is one of the judicial affair support professions and notary is a judicial position. Notaries carry out independently their professional duties and comply with the law. The head of the notarization practicing organizations is not answerable for the notarized deeds performed by a notary.

Furthermore, notaries must ensure absolute secrecy about the contents and the information involving notarial activities, unless competent state agencies request in writing of providing notarial records serving the inspection, investigation, prosecution and trial of concerned incidents.

***The principle of ensuring socialist legislation in the management of notary offices' operation***

Socialist legal principle in management of operation of notary offices requires state management agencies to comply with the law provisions; notarial requester and

notaries must comply seriously and thoroughly with the laws in exercising their rights and obligations to ensure the consistency of discipline, order, effectiveness and efficiency of state management.

#### ***3.3.2.4. Contents of state management of notary office***

State management of notary offices comprises of establishment, operation, dissolution, inspection and settlement of complaints and denunciations, and handling violations of notarization, which can be divided into three main contents:

##### ***First, the management of notary offices on formality***

Law on Notarization and other relevant legal documents have direct regulations on organization, operation, and rights and obligations of notary offices; standards and conditions for appointment, rights and duties of notaries; procedures and requirements of notarization. This includes the following provisions:

- Conditions and a dossier of an establishment of notary office: Establishment conditions of notary office are pretty liberal to create favorable conditions for the development of notary offices. According to the Law on Notarization (2014), *“notaries who jointly establish a notary office shall compile a dossier of request for establishment of a notary office and submit it to the provincial-level People’s Committee for consideration and decision. A dossier of request for establishment of a notary office must comprise a written request and a scheme on establishment of the notary office, clearly stating the necessity to establish the notary office, its expected organizational structure, name, personnel, location, physical conditions and implementation plan; and copies of appointment decisions of notaries jointly establishing the notary office”*. (Clause 1, Article 23).

- Notary offices must have head offices satisfying the conditions prescribed by the Government. Specifically, the head offices must have a specific address and meet the

requirements as a sufficient working area for notaries, staff, and reception of notarial requester and preservation of notarial records prescribed by law. If the offices are on the lease, the duration must be at least 3 years and the area must be big enough. The purpose of this provision is to emphasize notaries who are about to establish notary offices that notarial activities should be commensurate with the nature of an organization on behalf of the state performing public services.

- Copies of appointment decisions of notaries jointly establishing the notary offices:

Department of Justice assists the People's Committee to receive, consider and examine dossier of request for establishment of a notary office, and the provincial People's Committee is to decide the establishment of that notary office.

***Second, management of notary offices on substance (state management of contracts and transactions through the operation of notary offices).***

Given that this issue is not regulated directly in Law on Notarization, the law can only affect indirectly through the regulations on the operation principles of notary offices and application of legislation in various fields. Notaries' role is like a "preventive judge". Therefore, careful evaluation of documents in advance is a vitally important work of these offices. Because if notary offices authenticate incorrectly, it will cause damages and risks for customers and notaries must compensate with their property or the clients can sue notaries and notary offices at a court for settlement.

Notarial activities include a series of very complex procedures since notaries receive requests of contracting parties such as: identifying the subject status and the civil act capacity of the parties, checking voluntary in entering into contracts and determining the lawful origin of the contract object and the legality of the contract.



In fact, there are many gaps in the legislation in this field. For instance, the identity papers are required for carrying out the notarial procedure of contracts. However, there is no document stipulating which identity documents are appropriate, so the presentation of driving licenses, party membership cards, and student cards, etc... may be refused. Additionally, requesters as households may also confuse notary offices on which member of the households can engage in establishing contracts.

It can be seen that after more than 7 years since the Law on Notarization came into force (1 July 2007), the overloading pressure in notary bureaus has decreased; a mass of notary offices have been established. However, the rapid development of notary offices has exposed many loopholes of management and produced criminals. The operational management of notary offices is still loose, creating opportunities for criminals to "pierce" these gaps, such as the falsification of documents, seals and signatures in the civil contracts and transactions. Also, the fact that the location arrangement of notary offices is unreasonable has inadvertently created unfair competition. There were cases in which a customer was refused by a notary office due to the unconformity with the law of the contract, but afterward was immediately accepted in another office. The symptoms of slackening in accepting notarized contracts have raised suspicion of notarial quality at notary offices. In fact, the lack of professionalism and experience of many notaries has led to reckless notarization. As a consequence, there were notarized deeds refused by relevant authorities.

Currently, the notarization of contracts and transactions related to real estate is pretty messy, and there is a lack of coherence between the notarization practicing organizations. Sometimes, there is a quite different treatment by different notary offices; for example, it is declined in one place due to invalid documents, but is accepted in another location, derived from the lack of information sharing. More

seriously, the phenomenon that an asset is notarized in many notarization practicing organizations with different subjects is not rare. This situation has created conditions for notaries to deviate from professional qualifications and ethics, accordingly, may invite some suspicion of the person requesting notarial services as well as the relevant authorities. Besides, the deficiency of intranet systems among notary offices to share information and the missing of a joint database for controlling the status of the contracts have led the situation of one contract certified by two notary offices. Many suggestion is made that in addition to strengthening the management of the relevant authorities, it is indispensable to build shared database of notarization on the internet to help notaries in notary offices in the provinces detect unlawful notarized contracts and to establish Notary Association; and the Ministry of Justice and the local Department of Justice need to operate regularly notary training courses, enhancing competence for the notaries at notary offices to avoid unnecessary damage in the long run.

***Third, management of notary offices through inspection, examination and handling of violations***

Inspection, examination and handling of violations are important contents of the state leadership and management, which is an indispensable task of leading agencies. This is one of the three tasks need to be done by the Party and government at all levels, an integral part of the leadership of the Party and the State: (1) Decision of direction, policies and laws; (2) Organization and implementation; and (3) Inspection and examination.

Historically, the Party has always attached importance to the inspection and considered it as a paramount part in Party building and the entire leadership of the

Party. Inspection and examination are significant and permanent functions of the leadership agencies.

Inspection is to supervise the implementation of the Law on Notarization and guidance documents of implementation, to detect timely shortcomings and difficulties to get the appropriate solutions for notary offices. According to regulations, the Ministry of Justice is responsible for the unified management of notarization throughout the country. Department of Justice helps the provincial-level People's Committees perform management of notarization and authentication as to provide professional training for notaries, to examine, inspect and handle violations.

The inspection undertaken by the Ministry of Justice and Department of Justice assesses appropriately the situation of the implementation of policies and legislation for notary offices with proposal of improvement. These leading agencies of the Party and the State not only hold the responsibility of implementation of guidelines, policies, laws, directives and orders but also have a practical basis for research, supplements and amendments to existing policy, law and management mechanisms.

Examination and inspection are important measures contributing positively to the corruption, wastefulness and other law violations.

The practice has shown that the inspection and the examination are increasingly acknowledged its role in the development of the socialist state apparatus. In the earlier stage, the Ministry of Justice, Department of Justice only emphasized the inspection as “monitoring” and “controlling”, and considered it as a guarantee for the implementation of guidelines and policies. In the subsequent years, the role of inspection has been clearly stated in the legislation. Inspection does not only detect loopholes of mechanisms and policies, point out the defects of the apparatus and

operational process to modify, supplement and adjust to the mechanism and policies, but also praise and promote the new positive factors.

### ***3.3.3. Criteria for evaluating effectiveness and efficiency of state management on notarization***

One of the biggest challenges for state management of public service in Vietnam is how to evaluate the effectiveness and efficiency of its performance. We hardly can improve operational efficiency as we have not determined and established criteria to examine the performance of public service.

As can be seen, the objectives of state management focus primarily on the social efficiency. However, while economic efficiency can be determined by the cost per unit of product in a certain time, social efficiency is much more difficult to measure or define by conventional methods. It is a fundamental difficulty that makes us confused in measuring the effectiveness and efficiency of management (Nguyen A. T., n.d.).

Especially in the field of notarization, there is currently no study defining criteria to assess comprehensively the effectiveness and efficiency of state management for notarial activities. Therefore, in this part, based on my knowledge and experience, I give some criteria to evaluate the effectiveness and efficiency of state management for notarization. The evaluation criteria are examined on the following aspects: Quality of state management documents; Effectiveness of law enforcement; Effectiveness in implementing the organizational structure of state administration; and criteria for evaluating notarization practicing organizations.

#### ***a. Quality of state management documents***

Building and issuing state management documents is an indispensable factor in state management. The presence of the management documents in the operation of the

administrative agencies can be understood as the concentration of state power in order to operate management activities effectively (Phan T. T., 2014).

Do (2009) defined 6 indicators for assessment of legal documents of the State. They are: **First**, the documents state management must demonstrate the whole wills and interests of people. **Secondly**, the content of state management documents must be conformable with socio-economic conditions and development context of each locality. **Third**, the system of state management documents is to ensure the constitutionality, legitimacy and consistency. **Fourth**, the system of legal documents must be comprehensive, feasible, open and transparent, ensuring the promotion of their role and validity. **Fifth**, state management documents must meet the requirements of form. **Sixth**, the process of building and issuing state management documents must be flawless under a strict order and participation of concerned parties.

Accordingly, the system of state management documents state in notarization also need to ensure the above-mentioned indicators. Stemming from the jurisdiction of each agency in the state management apparatus, the system of management documents is classified correspondingly. Specifically, at the central level, the Ministry of Justice in collaboration with the Government issue documents for guiding the implementation of the Law on Notarization as well as some other documents in order to perform state management on notarization. Based on the implementation of documents at the national level, Department of Justice is responsible for advising the Provincial-level People's Committee to issue directives and other documents to implement state management at the local level.

Thus, to ensure the effectiveness and efficiency of state management of notarial activities, documents regarding state management in the field of notarization must be

issued in an adequate and timely manner and must be consistent with socio-economic conditions of locality. The document system also needs to ensure legitimacy, consistency, comprehensiveness, feasibility, openness and transparency.

As mentioned earlier, notarial service in Vietnam is in the process of transition from the Soviet model of totally controlled undertakings to deregulation under Socialist market mechanism. Additionally, as the subject of notarization is contracts and transactions, notarial activities are influenced by other related laws such as Civil Law, Land Law, Law on Residential Housing, Law on Real Estate Business, Enterprise Law and Law on Marriage and Family. Therefore, to ensure the effectiveness and efficiency of state management, the system of legal documents also need to be reviewed regularly in conformity with the practice for timely changes and replenishment.

***b. Effectiveness of law enforcement***

In the first aspect, the system of state management documents is of the significant importance because notarial activities must apply legal regulations to authenticate transactions and contracts requested by organizations and individuals. However, if the assessment of the legal system is based only on the system of legal documents and ignore the efficiency of law enforcement, it will probably lead to misleading results (Le D. D., 2012).

The White Paper of the European Commission on European Governance, which was issued in July 2002 boosted the discussion on the reform of European governance (European Commission, 2001). In this document, the Commission defines five principles that strengthen good governance. They are: Openness, Participation, Accountability, Effectiveness and Coherence. These principles are applied to all levels of government – local, regional, national, European and global (Wessel, 2004).

The above criteria can be used to assess the performance of state management in the field of notarization in Vietnam.

The first criterion is *Openness*. The state agencies should work in a more open manner. They should actively share and publish their activities to the public. In fact, the socialization policy of notarization is a new issue without precedent, therefore, the promulgation and dissemination of law, as well as sharing of information, is necessary to maximize the effectiveness of state management.

The second criterion is *Participation*. The effectiveness, relevance and quality of authority's policies depend on ensuring large participation throughout the policy chain - from conception to implementation. The improvement in participation will create more confidence in state management agencies. Moreover, in the transition stage of notary mechanism in Vietnam, arising problems and shortcomings in the implementation process is inevitable. Therefore, the participation of involved parties including policy makers, notaries and citizens are necessary to have a reasonable adjustment.

Regarding the criterion of *Accountability*, it is necessary to clarify the roles in the executive and legislative process. Each state agency must explain and take responsibility for their function.

The fourth criterion is *Effectiveness*. Policies regarding notarization must be timely and effective with clear objectives. In addition, an evaluation of future impact past experience is also important to ensure the effectiveness of state management.

Last but not least, it is of importance to ensure the *Coherence* in state management of notarization. Policies and action regarding notarization must be coherent and easy to understand. The coherence requires a strong responsibility and leadership of administrative agencies from central to local levels.

In short, ensuring five above mentioned criteria will help balance the interests of involved entities, thereby, ensuring the effectiveness and efficiency of law enforcement.

*c. Effectiveness in implementing the organizational structure of state management*

Figure 1 shows the organizational structure and function of each agency in state management of notarization in Vietnam. Currently, the state management for the organization and operation of notarization is implemented mainly by the Ministry of Justice and the Department of Justice. The Government performs the unified state management of notarization. At the Ministry of Justice, Bureau of Judicial Affairs Support is tasked with assisting the Minister of Justice on state management of notarization nationwide. At the Department of Justice, the Judicial Support Division has a function of assisting the Director of the Department of Justice on the state management of notarial activities at its locality (Phan H. H., 2012).

Thus, in order to manage notarial activities effectively, the state management apparatus must be operated in a smooth and harmonious way. Each component constituting the management apparatus is to determine its function. On top of that, the officials and employees of each state manage agency must have certain qualifications and have macro vision. They must be experienced experts who understand thoroughly the field of notarization.



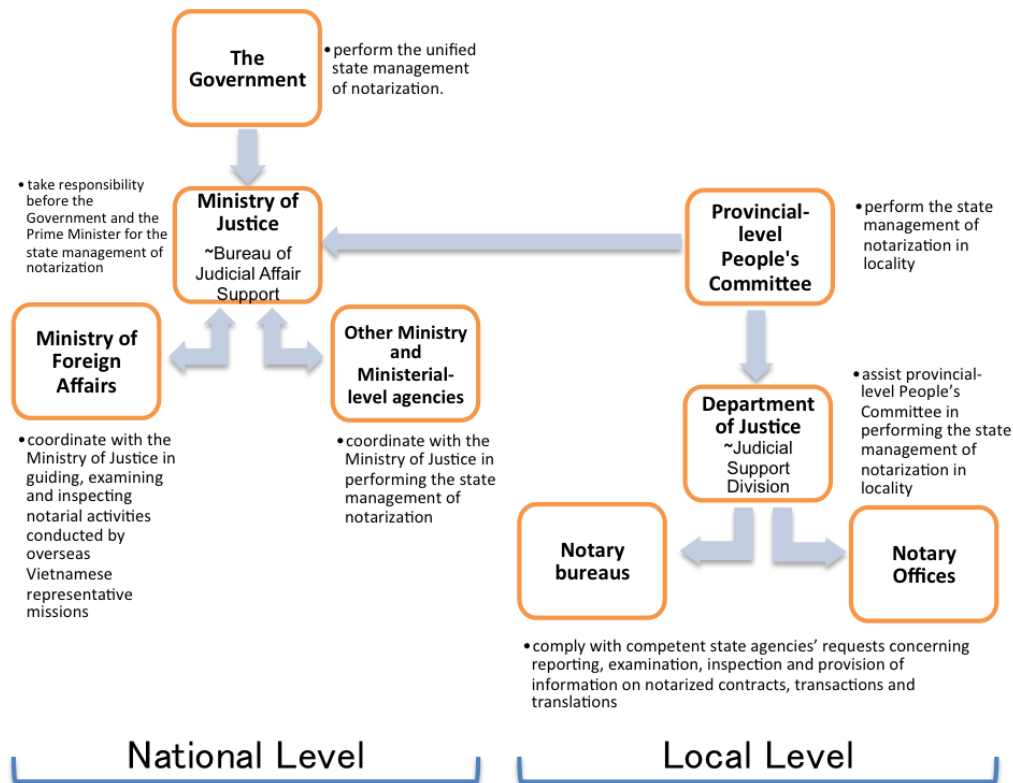


Figure 1: Organizational structure of state management of notarization in Vietnam

**d. Criteria for evaluating notarization practicing organizations.**

Currently, in Vietnam, there is no document defining criteria for evaluating the notarization practicing organizations on a national scale. Reviewing some legal documents at local level, the author found a number of criteria for assessment and ranking of notarization practicing organizations, which was defined by the Da Nang Department of Justice. The objective of this evaluation and ranking is to motivate, encourage and honor notarization practicing organizations who has emulated, finished their tasks efficiently, improved the quality and efficiency in notarial activities and met the demand of organizations and individuals (Decision 42/QD-STP dated on 7<sup>th</sup> August, 2014).

1. Qualifications of notaries and employees: Percentage of notaries and employees of notarization practicing organizations having university degrees or higher
2. Notaries: Number of notaries of a notarization practicing organization

3. Notarial records: Notarial records include a full set of documents as prescribed; The testimony of notarized documents must be close as regulated by Law on Notarization

4. Collecting notarization charges, notarization remuneration and other expenses as prescribed by Law. Post publicly these charges for citizens easy to track.

5. Implementation of obligations to the state and employees: Implementing tax obligations strictly, fully and timely to the state, signing employment contracts with employees fully, paying salary, social insurance and health insurance for employees adequately, timely.

6. Working attitudes and behaviors must be hospitable, the instruction and explanation for customers must be thoughtful, solving of notarial acts must be on time.

7. Working offices and facilities: Working offices need to be arranged reasonably working areas for notaries, employees and customers and include an area for notary records. Working offices must be equipped with necessary equipment to facilitate the work of notaries, employees, and notary requester.

8. Buying professional liability insurance. Notary procedures and working time must be public.

9. Archives: There must be an area for notarial records which requires safety and fire prevention. Staff working in the archives must have relevant professional qualifications and participate in training courses regarding archives.

10. Implementation of regular report and contribution of drafted documents to the Department of Justice

11. Developing website of notarization practicing organizations and applying information technology in notarial activities.

12. Participation in the Notary Association

13. Attending meetings, training and other activities organized by the Department of Justice

14. To settle complaints and denunciations appropriately.

These indicators can be used as a reference for assessing the notarization practice organizations in Haiphong.

## **CHAPTER 4: STATUS OF STATE MANAGEMENT ON NOTARY OFFICES IN HAIPHONG CITY, VIETNAM**

### **4.1. Overview of location, population, economy and society of Haiphong affecting notarial activities.**

Founded on 19 July 1888 and underwent 127 years of development, Haiphong City today is a first-rank central city at national level with 7 urban districts and 8 rural districts (including 2 island districts) and the population of 1.925 million residents<sup>4</sup>. Centrally located in the northern coastal region and just 102 km to the east of Hanoi, with the area of 1527.4 km<sup>2</sup><sup>5</sup> and a coastline of 125 km, Haiphong has a strategic position on socioeconomic and defense security situation for the entire northern region as well as throughout the country. Haiphong is a growth pole of the northern key economic, the main gateway to the sea of the northern provinces and “two economic corridors - one economic ring” between Vietnam and China. The city is also the country’s major marine economic area, an impregnable fortress regarding national defense – security and a shield of Hanoi capital. With its strategic location, especially the sufficient convergence of 5 types of traffic, Haiphong has become a center of industry, trade and services and an important traffic hub in the country and abroad. During the period of renovation and proactive international integration, Haiphong's strategic position has increasingly being asserted<sup>6</sup>.

On 5 August 2003, the Politburo issued Resolution No. 32-NQ/TW on “*the construction and development of Haiphong City in the period of national industrialization and modernization*”. With efforts and determination, the Party,

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<sup>4</sup> General Statistics Office of Vietnam (2013)

<sup>5</sup> Report No. 1809/BC-BTNMT dated 15 May 2014 of Minister of Natural Resources and Environment

<sup>6</sup> Haiphong Portal (2010)

government and people of the city have overcome difficulties and actively implemented the Resolution of the Politburo, developed the city according to orientations and objectives outlined by Resolution and gained remarkable achievements in many fields.

The city's economy grew rapidly. As can be seen in Figure 2, GDP increased on average by 11%/year, 1.57 times compared to the national rate. In 2012, the economic size increased 2.8 times in comparison with that in 2002, ranked second in the northern key economic region and accounted for 4.7% of total national GDP. Figure 3 shows that the economic structure has been shifted in accordance with the direction of industrialization, modernization, in which the service and industry sector accounted for nearly 90%. Industry and construction area increased by 11.09%/year, with some key industries, accounting for a high proportion of the national industry, such as shipbuilding, steel, cement, chemicals manufacturing. The average growth of service sector was 12.4%/year, ranking second in the Red River Delta region. In particular, the seaport services have developed rapidly; the production of port cargo has grown significantly, from 13.02 million tons in 2003 to 55.5 million tons in 2013. The city has made the most of the main gateway to the sea of the northern provinces (Viet Dung, 2015).

Mobilizing resources for development investment, especially attracting foreign direct investment (FDI) has progressed significantly in terms of both quantity and quality. In particular, from 2010 onwards, the city has attracted many big projects of renowned corporations from Japan and South Korea, such as LG, Bridgestone, NIPRO Pharma, Fuji Xerox. These investment projects have modern technology, high added value, large ripple effect and ability to attract other projects. Plus, the city has 9 investment projects in other countries (Sweden, Laos, the US, Taiwan, Australia,

Belarus, etc.) with a total investment capital of nearly 20 million USD (Linh Nham, 2012).

The strategic infrastructure projects such as Lach Huyen International Gateway Port, Tan Vu - Lach Huyen Cross-sea Bridge (the longest of its kind in Southeast Asia), Cat Bi International Airport Expansion and Hanoi-Haiphong Expressway began construction to create a new momentum for the development of the city in the future (Hai Phong Portal, 2011). The image and position of the city at home and abroad has been changed in a positive direction. In 2013, the Provincial Competitiveness Index (PCI) of the city ranked 15th nationwide, up 35 levels compared to the year 2012; ranked third in the Red River Delta region<sup>7</sup>. The city was assessed by Channel News Asia as one of six emerging cities of Asia regarding sustainable development<sup>8</sup>.

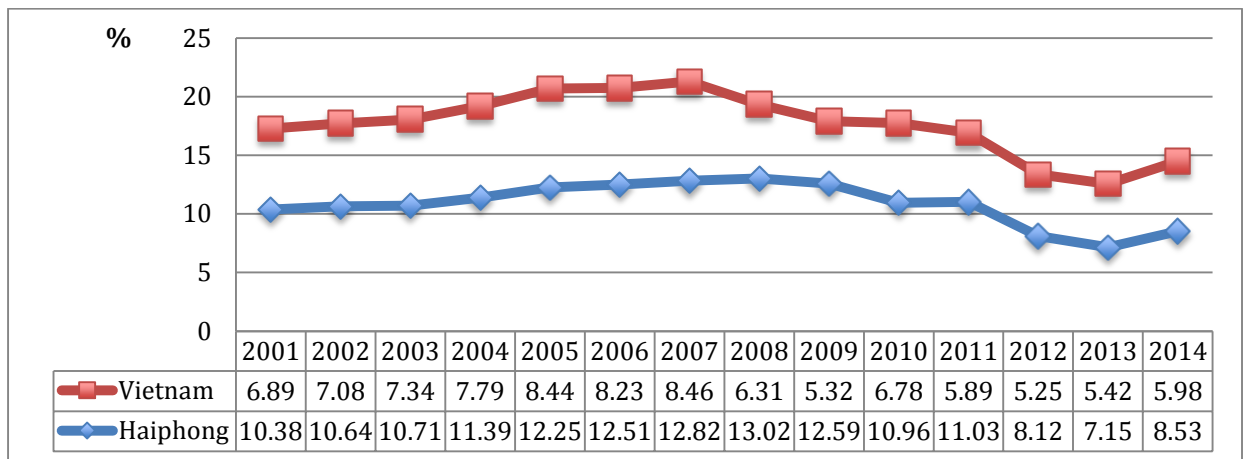
Overall, after 10-year implementation of the Politburo's Resolution, Haiphong's development path has been formed more clearly. The city has created a sound basis for further development in subsequent years. Haiphong has gradually promoted the role of the important traffic hub, the main gate to the sea of the northern localities, the development center in many fields of the region and the country, especially in the maritime economy.

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<sup>7</sup> Check the Provincial Competitiveness Index (PCI) at <http://eng.pcivietnam.org>

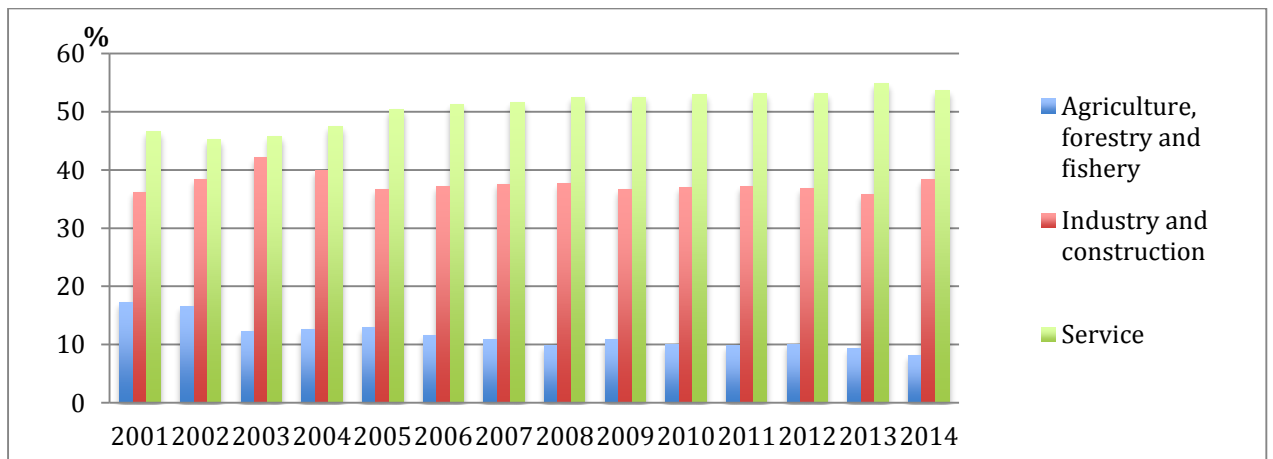
<sup>8</sup> Refer "*The making of a city*" by Channel News Asia at <https://www.youtube.com/watch?v=NgyluGTLZe0>

**Figure 2: GDP growth rate of Vietnam and Haiphong**



Source: General Statistics Office of Vietnam, Haiphong Portal, 2014

**Figure 3: Economic structure of Haiphong**



Source: Haiphong Portal, 2014

Implementing Vietnam’s socio-economic development strategy for the period of 2011-2020 proposed by the 9<sup>th</sup> Party Congress, Haiphong People's Committee has developed Action Plan<sup>9</sup> with the specific contents. The overall objective is to promote comprehensively potentials and advantages of the port city, to concentrate highly all resources to accelerate the process of industrialization, modernization and international integration, thus making a breakthrough development, so that Haiphong

<sup>9</sup> Action Plan of Haiphong People’s Committee regarding implementing Vietnam’s socio-economic development strategy for the period of 2011-2020 was issued together with Decision No. 605/QĐ-UBND dated 21 April 2011 of Haiphong People’s Committee.

will basically become an industrial – port service city towards civilization and modernization; to develop economy rapidly and sustainably; to gradually become a prominent center of industry, maritime services and transport of Vietnam, a key national tourism, trade and financial center of Southeast Asia; to become one of the first localities in the vanguard of industrialization and modernization, and along with other growth poles to accelerate the development of the whole northern region; to deserve a first-rank central city; to develop culture which is truly spiritual foundation of society; to strengthen and establish firmly national defence and security; to ensure justice and social security; to improve and enhance the quality of people's lives.

The specific objectives of the Action Plan are: Haiphong's GDP proportion in Vietnam's GDP of 7.3% by 2020; the average annual GDP growth rate of 13.5%-14% in the period 2016-2020; the average annual growth rate of service sector for the period 2011-2020 from 14.5% to 15%, 14% in industry and construction area and 7% in agriculture area; GDP per capita (at current prices) reaching 4.900-5.000USD by 2020; modern economic structure with main products having high competitiveness in industry, service and agriculture; the total social investment accounting for 380 trillion in the period 2016-2020; the ratio of natural population growth of less than 1%/ year; the proportion of urban population reaching 80-85% by 2020; the proportion of trained workers of 85-90% by 2020; creating jobs for 500,000 workers in 2011-2020; the percentage of agricultural workers accounting for around 14% by 2020; the unemployment rate in urban areas maintaining at 4%, improving the utilization rate of working time in the rural areas to 95% by 2020.

In the Action Plan to implement Vietnam's socio-economic development strategy for the period of 2011-2020, Haiphong determined the following breakthrough tasks: Restructuring the city economic structure as the basis for development of investment,



infrastructure, human resources; Innovation of growth by harmonizing between growth in width and depth, improving productivity, efficiency and competitiveness of enterprises; Focusing on construction to make the breakthrough development of socio-economic infrastructure, especially seaport and traffic infrastructure; Giving priority to developing high quality human resources and science and technology to meet rapid and sustainable development requirements; Accelerating administrative reforms fastened and synchronized with improving efficiently prevention of corruption and wastefulness and practicing democracy at the grassroots level, for example: Transferring some works and public services to enterprises, social organizations and non-state organizations.

Thus, with a convenient location, centralized population, and high socio-economic growth in the coming years and the implementation of administrative reforms, especially the socialization of notarial activities, will contribute positively to socio-economic development of the city.

Besides the social and economic development, as Haiphong is a large area with diverse socio-economic activities, disputes arising from civil and commercial transactions appear more frequent. Especially since Vietnam became an official member of the World Trade Organization (WTO), Vietnam's economy has developed significantly. Practices have proven in the market economy, that individuals and organizations need evidence to guarantee safety and reliability for economic, trading and civil relations in accordance with law, contributing to healthy social relationships. Hence, it is forecasted that the demand for notarization by Haiphong people in the future is enormous.

The growing notarial demand requires the development of the notarization practicing organizations to serve socio-economic activities, to prevent disputes and to

provide documentation with probative value for the investigation, adjudication and settlement of disputes, strengthening socialist legislation and contributing to building and perfecting the state of the people, by the people and for the people. Development of notary practice organizations is an important task in the policy orientation for the socialization of notarization activities. Administrative reform will bring more development opportunities for notarization practicing organizations in Haiphong. Being a new form of notarization practicing organizations, in the long run, a notary office will be the most popular form of notarization practicing organizations in Vietnam. At the same time, the function of notary bureau is still indispensable, especially in mountainous and remote localities. In the future, as market economy thrives, the function of notary bureau will shrink in the direction “denationalization”.

Through the abovementioned basis of socio-economic development of Haiphong till 2020 and the forecast of notarial demand of individuals and organizations in the coming years, it can be seen that the progressive establishment of notary offices in Haiphong is essential, which requires state management agencies to build an appropriate development plan of notarization practicing organizations.

#### **4.2. Implementation of Law on Notarization 2006 and the advent of notary offices in Haiphong**

Law on Notarization is one of the significant documents institutionalizing the policy of administrative and judicial reform of the Party and the State, in which the breakthrough is a socialization direction of notarial activities with the establishment of notary offices, contributing to improvement of the quality and effectiveness of notarial activities, the socio-economic development, international economic integration, political stability and security, social order and safety of the country in general and Haiphong City in particular. With that realization, Party Committee,

People's Council, People's Committee of Haiphong City have paid special attention to the institutionalization, direction, effective implementation of regulations of Law on Notarization and guiding documents of the Ministry of Justice.

After Law on Notarization 2006 and guiding documents took effect on 1 July 2007, Haiphong People's Committee issued the Plan No. 3970/KH regarding the implementation of Law on Notarization in Haiphong City, commissioned concerned departments to carry out comprehensively related tasks such as propagation and dissemination; professional guidance, training; converting notary bureaus to public non-business units; building a project for development notary practice organizations; formulation of database for notarial information.

The Department of Justice was directed to conduct review and examination of legal documents related to notarial activities under the jurisdiction of the city; to propose amendment, supplement or cancel of the contents contrary to Law on Notarization and guiding documents. At the same time, the Department of Justice coordinated with Haiphong Television Broadcast Station, Haiphong Newspaper, Haiphong Security Newspaper, mass media agencies from other localities to disseminate and introduce broadly regulations of Law on Notarization and guiding documents to the people and organizations in the city.

By and large, the Law on Notarization and guiding documents have been implemented uniformly and efficiently, and agencies, organizations and individuals in the city assess them as a right policy direction and concur fully and comply seriously. Therefore, the implementation of Law on Notarization has achieved certain and remarkable results. However, there are limitations when implementing the Law on Notarization such as influence of the memories of previous experiences during the subsidized period; short transition time before notarial service socialization;

personnel, organizational apparatus and the financial mechanism of notary bureaus are not ready for a complete socialization.

The progressive development of the economy has led to a vibrancy of civil and trading transactions and the demand for notarial services has been increasing rapidly. Previously, before the policy of socialization, the number of notary bureaus are limited, so people encountered many difficulties and annoyances in notarization. The Law on Notarization (2006) has created a breakpoint and facilitated the establishment of notary offices, enabling people and enterprises to access notarial services more easily. The first notary office of Haiphong was founded in 2009. After that, the number of notary offices has been increasing steadily over the years and gradually satisfied the progressive demand for notarial services in the city.

### **4.3. State management of notary offices in Haiphong**

#### ***4.3.1. Overall assessment of organization and operation of notary offices***

In the face of requirements of administrative reform, judicial reform and international economic integration, Law on Notarization which was promulgated in 2006, inherited the positive and justified provisions on the notarial organization and operation in Decree No. 75/2000/ND-CP and simultaneously supplemented new provisions in the direction of improving notarial institutions, bringing Vietnam notarial activities close to international notarial practice. Therefore, organization and operation of notarization is more favourable compared to the Decree No. 75/2000/ND-CP, such as: clear determination of scope of notarial practice, professionalization to create equal and healthy environment in notarial activities, emphasis on the presence of notary offices alongside notary bureaus. Hence, notaries are allowed to choose the model of practice organization, which creates excellent opportunities for notaries to promote their strength points.

Generally speaking, after 7 years of implementation of the Law on Notarization, notarial organization and operation in Haiphong has yielded certain results: the awareness of society in general and of all levels and sectors concerning notarization has brought many positive drastic changes. Organization and operation of notarial activities in Haiphong have been developed strongly with the orientation of socialization, and notaries and notary offices have been improved both in quantity and quality. Position and role of notaries in social life have risen gradually to meet timely and conveniently the increasing notarial demand of people, businesses, and organizations. The progressively advanced quality of notarial services has helped ensure legal security for civil, economic and commercial transactions, prevention of disputes and law violations, thus contributing to the effective state management, fostering socio-economic development and administrative reform, judicial reform, political stability and security, social order and economic integration of the city in the new period.

These results, first, come from the oneness in leadership and direction from top to bottom, from central level to local, grassroots level; the determination of perception and action of the entire political system in the city. Correspondingly, the implementation of the Law on Notarization in Haiphong City has always been oriented, paid close attention and provided with favourable conditions by the Ministry of Justice, the city's Party Committee and the People's Council, Steering Committee for Judicial Reform and Haiphong People's Committee. Additionally, judicial bodies, Interior agencies, notaries and notary offices, the people, enterprises and organizations also support and coordinate actively with this notarial socialization. On the other hand, along with the socio-economic development of the city, the notarial need of people, enterprises and organizations in the field of business and trade is

increasing, which is a favorable condition for the development of the notary profession in Haiphong.

However, the above results are preliminary and the focus is just on solving the most pressing problems, laying the foundations for notary development in the new situation according to socialization oriented policy and comprehensive administrative reform and judicial reform afterwards. In fact, organization, operation and management of notarization in Haiphong still have many shortcomings, which are not corresponding to potentials and development missions. There are many different reasons. The subjective aspect is derived from notaries themselves, notary offices, agencies, organizations and individuals concerned. The objective one stems from the ununiformed legal regulations related to notarization, land and housing; negative social impacts as a consequence of market economy; effects of the economic downturn in the recent years.

#### ***4.3.2. Notaries in notary offices***

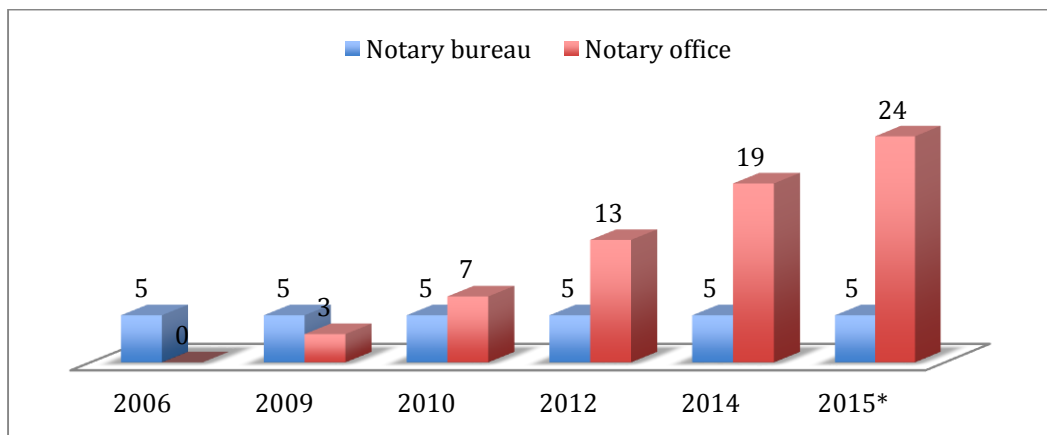
Haiphong People's Committee directed the Department of Justice to implement several measures to develop notary profession in both quantity and quality. Experiencing seven years of implementation of Law on Notarization, the Department of Justice submitted to the Ministry of Justice to appoint 31 notaries; especially within 2014 there were 16 notaries appointed. Additionally, the Department of Justice has also created conditions for notaries to join professional training programs, soft skills and supplementary knowledge (computing, foreign languages, etc.).

In order to promote vocational training and improve qualifications and develop the staff of the judiciary and judicial support agencies, in 2014, the Department of Justice cooperated with Academy of Justice, the Ministry of Justice, to organize training courses for notarial profession in Haiphong. As can be seen, in the light of judicial

reform and administrative reform, development of personnel training, especially judicial officers, is taken into consideration by Party Committee and Government. Notary profession requires professional skills and they should be considered as impartial arbiters who protect the rights and legitimate interests of organizations and individuals participating in civil and commercial transactions to prevent disputes and law violations, thus, support administration, investigation and trial. The 6-month professional training course by 49 trainees is a typical instance of the city’s effort to develop the local notarial resources.

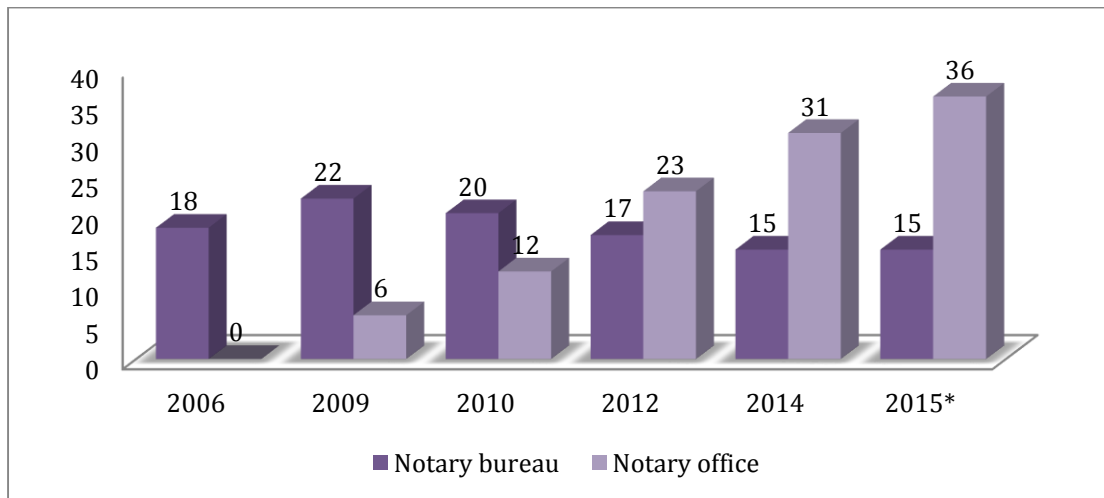
The source of notaries and notarial internship in Haiphong has developed in both quantity and quality. Before the application of the new law (2006), Haiphong had only 18 notaries operating at 5 state notary offices. After seven years of implementation of the Law on Notarization, Haiphong has 46 notaries, including 31 notaries working in 19 notary offices (Figure 4 & Figure 5).

**Figure 4: The development of notarization practicing organizations in Haiphong**



*Source: Haiphong Department of Justice (2015)*

**Figure 5: The development of notaries of notary practice organizations in Haiphong**



Source: Haiphong Department of Justice (2015)

\* Figure for the year 2015 is updated to March 2015.

Most of the notaries and other professional staff of notary offices in Haiphong are essentially trained to professional working style. They are dedicated to works and comply with professional ethics and show professional capabilities in notarial activities. Hence, the role and position of notaries is widely recognized in society.

***\*Shortcomings and reasons:***

It appears that the current situation of notaries is not commensurate with the city's required tasks, location, and socio-economic development potentials. It is reflected in the following facts.

There are 46 notaries in the city with its population of over 1,900,000 people<sup>10</sup>, so the ratio is one notary/about 48,700 inhabitants. The majority of notaries concentrate primarily in urban areas; meanwhile in the countryside with the restricted socio-economic development conditions, the number of notaries is not enough and unevenly distributed.

<sup>10</sup> General Statistics Office of Vietnam (2013)



In terms of professional training: Due to legal regulations as well as job requirements, most of the notaries certify every transaction and contract without intensive practice orientation on commercial contracts or real estate contracts. That is a difficulty to create a competitive prestige for each notary in each field. There is a deficiency of notaries who are knowledgeable about international laws, proficient in foreign languages and professional in the areas of investment and international trading business.

The regulation about persons exempted from notary training is stipulated in the article 10 of the Law on Notarization 2014, under which exemption is considerably broad. Therefore, it is hard to guarantee whether appointed notaries is commensurate with job requirements, thus casting a shadow against local management. Deriving from the fact that notary is a specific profession involving many fields of law (such as Civil Law, Land Law, Housing Law, Enterprise Law, Investment Law, etc.), associated with the incessant socio-economic development but implicit with many occupational hazards, besides the requirement of regular training, notaries must have notarization service record with certain experiences and skills.

In addition, there are some notaries who do not attach importance to professional skills, competencies and ethics, but behave improperly in practice, chase profits with manifestations of unfair competition and scrambling for customers, and do not coordinate appropriately with agencies, organizations and individuals concerned. This fact leads to low practice quality. The causes are both subjective and objective, which comes from awareness, competence and qualifications of each notary, legal environment, and other social impacts.

#### ***4.3.3. Development plan of notary offices***

Haiphong People's Committee directed the Department of Justice in collaboration with the concerned departments to take measures to develop notary offices according to Law on Notarization, guiding documents and the development plan of notarization practicing organizations in the city. More specifically, People's Committee directed the Department of Justice in collaboration with the Department of Interior and Department of Finance to build the scheme, and then issued Decision No. 1216/QD/UBND dated 24 October 2008 about converting notary bureaus into public non-business units. Director of the Department of Justice instructed notary bureaus to convert and rearrange the organization and operation under the provisions of the Law on Notarization, direction of Ministry of Justice and the decisions of People's Committee.

In 2009, following the instruction of the Ministry of Justice, Haiphong People's Committee directed the Department of Justice in charge of setting up the scheme and combining action with the Department of Home Affairs, and then issued Decision No. 1362/QD-UBND dated 16 July 2009 approving the scheme of developing notarization practicing organizations in Haiphong in the two years 2009-2010. In 2011, implementing the Decision No. 250/QD-TTg dated 10 February 2010 of the Prime Minister on approving "the Scheme on formulation of the master plan for development of notarization practicing organizations in Vietnam through 2020" and Decision No. 240/QD-TTg dated 17 February 2011 on "promulgating criteria for planning the development of notarization practicing organizations in Vietnam through 2020", under new directions of Ministry of Justice, People's Committee directed the Department of Justice to develop the scheme on the plan for development of notarization practicing organizations in Haiphong through 2020. Accordingly, by

2020, Haiphong will have 55 notarization practicing organizations (including notary bureaus and notary offices, in which notary offices will be the majority), which are distributed appropriately, satisfying the notarial demand of citizens, enterprises and organizations in district areas.

People’s Committee also gives priority for development of notary offices in areas having high notarial demand and convenient conditions for the implementation of notarial socialization pursuant to the city’s plan. Simultaneously, the People’s Committee increases incentives for developing notary offices in remote areas where socio-economic conditions are underdeveloped through facilitating establishment and operation registration, taxes, finance, land and so on.

Up to March 2015, Haiphong has 29 notarization practicing organizations, including 5 notary bureaus and 24 notary offices. Comparing to the period before deploying the Law on Notarization (2006), the number of notarization practicing organizations increased by 24 organizations (5.8 times).

**Table 1: List of notary offices in Haiphong (3/2015)**

| No | Notary office            | Business form      | Established Decision       | District   | Numbers of notaries |
|----|--------------------------|--------------------|----------------------------|------------|---------------------|
| 1  | An Phat notary office    | Partnership        | 1286/QD-UBND<br>16/7/2009  | Hong Bang  | 2                   |
| 2  | Haiphong notary office   | Partnership        | 1521/QD-UBND<br>07/8/2009  | Hong Bang  | 3                   |
| 3  | Vinh Thinh notary office | Partnership        | 2486/QD-UBND<br>11/12/2009 | Ngo Quyen  | 2                   |
| 4  | Trung Tam notary office  | Partnership        | 1812/QD-UBND<br>14/9/2009  | Hong Bang  | 2                   |
| 5  | Nam Hai notary office    | Private enterprise | 514/QD-UBND<br>16/12/2009  | Hai An     | 1                   |
| 6  | Kim Minh notary office   | Private enterprise | 625/QD-UBND<br>16/4/2010   | Ngo Quyen  | 1                   |
| 7  | Dat Cang notary office   | Partnership        | 1133/QD-UBND<br>08/7/2010  | Le Chan    | 2                   |
| 8  | Dat Viet notary office   | Partnership        | 2097/QD-UBND<br>06/12/2010 | Duong Kinh | 2                   |
| 9  | Toan Cau notary          | Partnership        | 2096/QD-UBND               | Le Chan    | 2                   |

|    | office                        |                    | 06/12/2010                 |             |   |
|----|-------------------------------|--------------------|----------------------------|-------------|---|
| 10 | An Binh notary office         | Private enterprise | 193/QD-UBND<br>30/01/2011  | Le Chan     | 1 |
| 11 | An Bien notary office         | Private enterprise | 1580/QD-UBND<br>05/10/2011 | Le Chan     | 1 |
| 12 | Nhan Hoa notary office        | Partnership        | 1864/QD-UBND<br>18/11/2011 | Hong Bang   | 3 |
| 13 | Gia Phuc notary office        | Private enterprise | 507/QD-UBND<br>18/4/2012   | Ngo Quyen   | 1 |
| 14 | Bao Phat notary office        | Private enterprise | 1146/QD-UBND<br>06/6/2014  | Vinh Bao    | 1 |
| 15 | An Khang notary office        | Private enterprise | 2830/QD-UBND<br>22/8/2014  | Thuy Nguyen | 1 |
| 16 | Hung Phat notary office       | Private enterprise | 1829/QD-UBND<br>22/8/2014  | Do Son      | 1 |
| 17 | Cat Ba notary office          | Private enterprise | 2131/QD-UBND<br>09/10/2014 | Cat Hai     | 1 |
| 18 | Bao Toan notary office        | Private enterprise | 2444/QD-UBND<br>10/11/2014 | Hai An      | 1 |
| 19 | Cong Nguyen notary office     | Private enterprise | 2445/QD-UBND<br>10/11/2014 | Hai An      | 1 |
| 20 | Cao Van Nguyen notary office  | Partnership        | 2446/QD-UBND<br>10/11/2014 | Thuy Nguyen | 1 |
| 21 | An Duong notary office        | Partnership        | 2662/QD-UBND<br>01/12/2014 | An Duong    | 2 |
| 22 | Cong Minh notary office       | Private enterprise | 2999/QD-UBND<br>27/12/2014 | An Duong    | 1 |
| 23 | Phu An notary office          | Private enterprise | 3017/QD-UBND<br>30/12/2014 | Kien An     | 1 |
| 24 | Nguyen Thi Khue notary office | Private enterprise | 432/QD-UBND<br>13/02/2015  | Kien An     | 2 |

Source: Haiphong Department of Justice, 2015

**\* Shortcomings and reasons:**

With the policy of notarial socialization with designed route, Law on Notarization stipulates the parallel existence of two types of notarization practicing organizations. They are notary bureaus founded and operated by the State under the model of public non-business units and notary offices established by private notaries, organized and operated under the business model. Consequently, there is no uniformity in the implementation of socialization, leading to difficulty in deployment, operation and

management of these two kinds of notarization practicing organizations (such as the inequalities in the State's support or financial mechanisms).

Notary offices are distributed unevenly, situated mainly in the inner city, meanwhile, the rural districts such as An Lao, Bach Long Vi, Kien Thuy and Tien Lang still do not have any notarization practicing organization to respond quickly and timely the notarization demand of citizens, organizations and enterprises in the locality. The main reason is that the notarial need between districts is uneven. Owing to the different socio-economic growth rates, notarization needs tend to focus primarily in densely populated areas where there are many businesses as finance, banking, real estate, manufacturing enterprises, trading, services, or in areas with the high urbanization rate (For example: Hong Bang, Le Chan, Ngo Quyen average over 12,000 notary requests per year; Kien An, Hai An, Duong Kinh, Thuy Nguyen, An Duong average over 7000 notary requests per year).

Among 24 notary offices, there is no notary office with more than 3 notaries; there are 14 notary offices with 1 notary (Table 1). However, the offices and facilities are limited. Some notary offices cannot afford to rent a well-located office for transactions. Some notary offices have not got the means to apply modern information technology to access and consult quickly on necessary legal information for practice.

#### ***4.3.4. Notary professional Operation***

In 5 years since the application of the Law on Notarization 2006 (from 01/7/2007 to 01/7/2012), the notarization practicing organizations certified 168,590,000 contracts transactions; Total notary fees collected was 88,434,288,000 VND; the notarial remuneration is 13,004,030,000 VND; State budget submitted is 32,351,030,000 VND (Table 2). Thus, the number of notarial deeds and charges and

budget contribution increased dramatically in comparison to the period before the deployment Law on Notarization.

**Table 2: Operation of notarization practicing organizations**

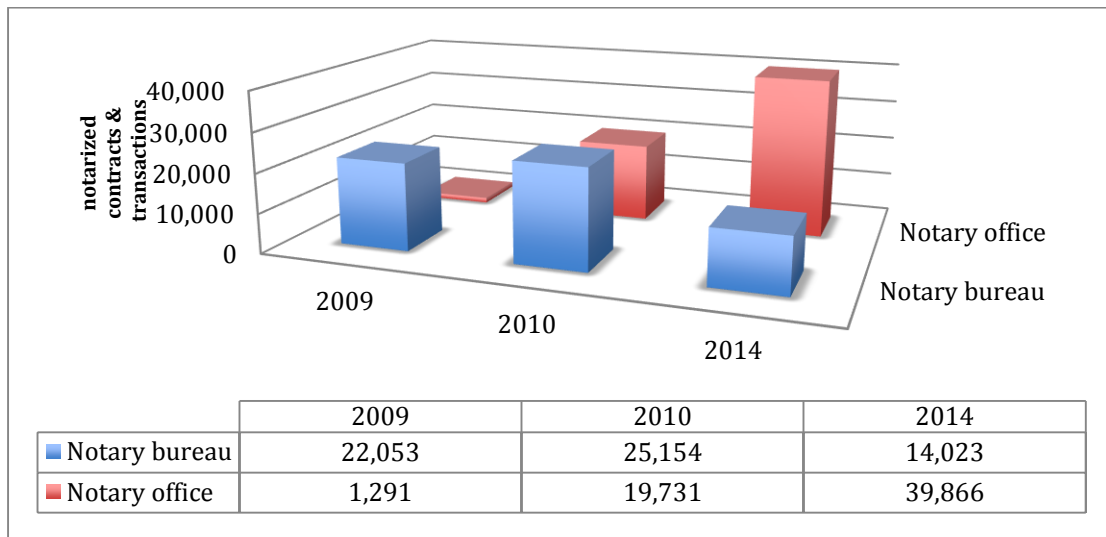
| No. | Year                     | Notarized deeds<br>(thousand) | Notarization charge<br>(thousand VND) | Notarization remuneration<br>(thousand VND) | National budget contribution<br>(thousand VND) |
|-----|--------------------------|-------------------------------|---------------------------------------|---|--|
|     | (1)                      | (2)                           | (3)                                   | (4)   | (5)  |
| 1   | 2007<br>(from 01/7/2007) | 11,400                        | 2,110,538                             | 150,420                                     | 1,342,358                                      |
| 2   | 2008                     | 14,130                        | 12,523,866                            | 452,064                                     | 6,660,733                                      |
| 3   | 2009                     | 28,495                        | 15,754,130                            | 2,777,670                                   | 7,718,291                                      |
| 4   | 2010                     | 48,540                        | 24,810,363                            | 3,785,312                                   | 7,258,349                                      |
| 5   | 2011                     | 46,894                        | 24,817,152                            | 4,470,302                                   | 7,100,944                                      |
| 6   | 2012 (to 1/7/2007)       | 19,131                        | 8,418,239                             | 1,368,262                                   | 2,270,355                                      |
|     | <b>Total</b>             | <b>168,590</b>                | <b>88,434,288</b>                     | <b>13,004,030</b>                           | <b>32,351,030</b>                              |

*Source: Haiphong Department of Justice, 2013*

A comparison of the number of contracts and transactions certified by notarization practicing organizations in 2009, 2010 and 2014 reveals that: In the early period since the first notary office was established (September 2009), the number of contracts and transactions performed at notary offices accounted for only a very small fraction (1,291 notarial deeds), compared with that of notary bureaus (22,053 notarial deeds). In the next year (2010), along with the establishment of four more notary offices, the number of contracts and transactions carried out at the notary office increased significantly, 19,731 deeds corresponding notary charge of 7.5 billion VND and over 166 million VND contributed to the state budget. With the policy of promoting notary socialization of the Government, the number of notary offices constantly increased, satisfying the progressive notarial needs of people in the city. Outstandingly, in 2014, the number of notarial deeds of notary offices accounted for 39,866 contracts and

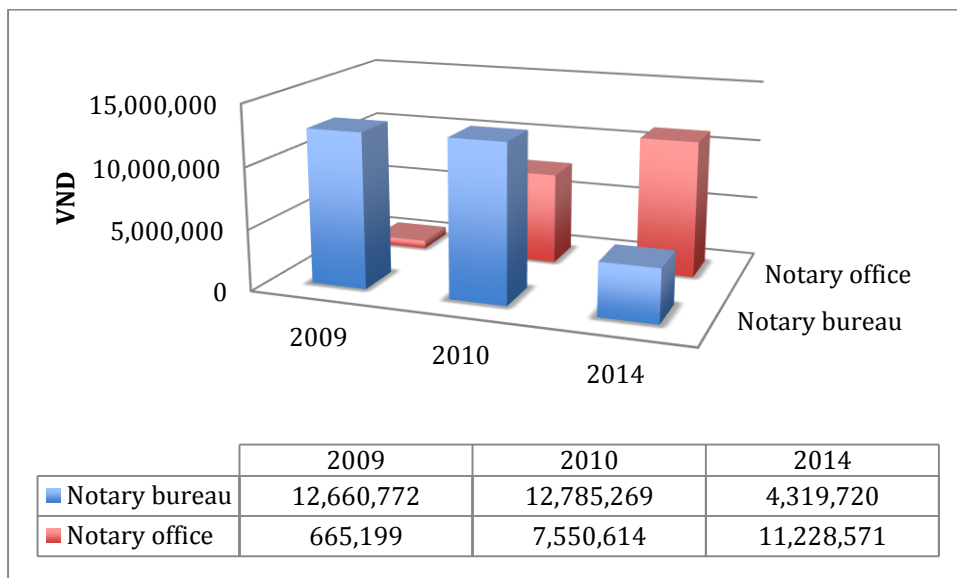
transactions, more than 2.8 times that of notary bureaus (Figure 6, 7 & 8). This fact reflects the Government’s objective that is to unburden state notary bureaus and facilitate the notarization activities shift from state monopoly to public services with the goal of serving customers.

**Figure 6: Numbers of notarized contracts and transactions**



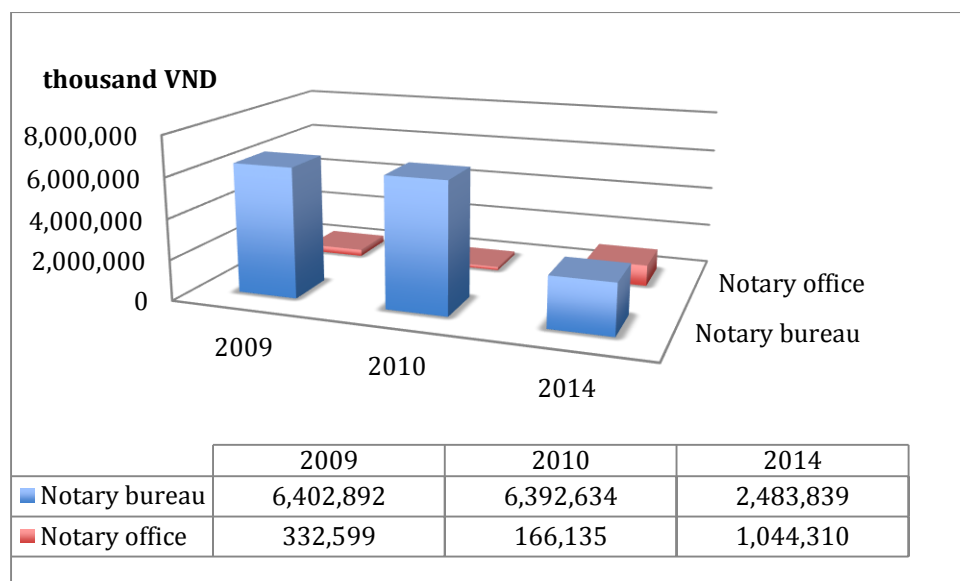
Source: Haiphong Department of Justice, 2014

**Figure 7: Notarization charge**



Source: Haiphong Department of Justice, 2014

**Figure 8: National budget contribution from notarial service**



*Source: Haiphong Department of Justice, 2014*

Besides, notary offices also has actively consulted on the draft laws and decrees concerned; participated in the administrative procedure reform of the city; joined the propaganda and law dissemination to the people through notarial activities, guiding documents and explaining the rights and obligations of the related parties; answered the concerns of the agencies, organizations and individuals involved.

Department of Justice has held quarterly notarial profession exchanges to review promptly and resolve difficulties and problems in the organization and operation of notarization and to ensure notary activities in the city be unified in accordance with the Law on Notarization and guiding documents.

Overall, notarial activities have developed towards professionalism and efficiency, despite of the impacts of the economic recession in recent years, notary offices and notaries have discharged actively their tasks through certificating contracts and transactions in accordance with the requirements of the organizations, individuals, enterprises and other social activities and notary offices has been positively contributing to protecting the legitimate rights and interests of organizations and



individuals, thus serving objectives of administrative and judicial reform and building the socialist rule-of-law state. These are remarkable achievements, facilitating the development of notarization.

**\* *Shortcomings and reasons:***

In the legal system in general and the Law on Notarization, in particular, the relationship between the notarization practicing organizations, notaries and competent state agencies (tax agencies, property registration agencies, etc.) is not regulated. As a consequence, after notarial deeds are certified, the individuals, businesses and organizations can perform or not perform the registration of the ownership, while the competent authorities are not manageable, thus leading to more complex phenomena, law violations as tax evasion, breach of the regulations for ownership certification.

There is a phenomenon that some organizations and individuals abused purchase contracts and the cancelation of notarized housing contracts to conceal other contracts and transactions, thus causing the changes in civil, economic and administrative relations. That does not reflect the actual nature of the transactions, leading to legal insecurity and serious consequences. This phenomenon is more and more popular with sophisticated tricks, especially in the economic recession period when the issue "black credit" is increasingly complicated.

The understanding of some agencies, citizens, businesses and organizations in the society about notarial activities is still limited, in which, notary activities are not regarded as judicial support activities contributing to ensure legal safety for transactions, prevent disputes and law violations and support the state management and supporting judicial activities through providing proof of evidence for trial and settling disputes. Hence, the notarial need of individuals, agencies and organizations in the society is still restricted, despite the considerable potential demand. Even there

are cases that organizations and individuals did not request for notarization for contracts of purchase or land/housing conveyance regardless of law prescription. That results in disputes, affecting the rights and legitimate interests of the people, organizations and businesses owing to the lack of authentic evidence certified by a notary of notary office.

On the other hand, there are also different viewpoints on notarial activities, notary professional processes and confusions between notarial proceedings with administrative procedures. It also affects the development of notary professional operation towards the orientation of socialization.

#### ***4.3.5. State management of local notarization***

State management of notarization in Haiphong in recent years has achieved certain results that contribute to the development of notary offices. Haiphong People's Committee has directed Department of Justice with a role as a professional body supporting People's Committee and the Ministry of Justice to manage notarial activities.

The Department of Justice has advised and implemented measures to strengthen notarial management and development towards socialization (in collaboration with other concerned departments to formulate and submit to People's Committee to implement the Law on Notarization, the Scheme on development of notarization practicing organization, Decision on converting notary bureaus into public non-business units; to organize professional training for notaries, etc.).

In 7 years, the Department of Justice submitted to the People's Committee to issue establishment decisions for 24 notary offices. Additionally, the Department of Justice has coordinated closely with other departments and agencies to facilitate notary offices and notaries in operation. Specifically, the department has collaborated with

the Department of Natural Resources and Environment to direct the registration land use rights; with the State Bank of Vietnam - Haiphong branch to direct credit institutions; with Haiphong City police, the Department of Finance, Tax Bureau, etc. to find methods to solve problems and difficulties in the process of notary practice, such as the registration of secured transactions, registration of transferring ownership after the contracts or transactions are notarized, checking the information on land separation, fake papers before practicing notarization, detecting and preventing the phenomenon of defraud notaries to perform legal acts, etc.

The Department of Justice has coordinated with the concerned agencies to conduct inspection and supervision of activities of notary offices and notaries to settle complaints and denunciations as prescribed by law; and reorganize timely, learn from experience, help notary offices and notaries remedy mistakes and gradually bring notarization practice in discipline. In the first 5 years in implementing the Law on Notarization, the Department of Justice has conducted 5 inspections, examined 20 cases proposed by agencies, organizations and people; organized examination 3 times in notary offices, particularly in the last 6 months of 2012, 10 notary offices were examined; organized periodically notarization briefings; issued timely documents of directing and reorganizing notarial operations when complex phenomena appeared.

In order to provide information on notarized contracts and transactions related to real estate to notaries and notary offices with the aim of prevention of violations and restriction of disputes and risks for notary offices and offices, the Department of Justice has actively implemented to build information databases and promulgated the regulations on the organization and operation of notarial contracts and transactions involving real estate. That is an initiative of Haiphong in the state management of notarization, the first centralized management model of notarial information in the

whole country. This model is highly appreciated by the Ministry of Justice and put in Circular No.11 and the Law on Notarization 2014.

In 2012, the Department of Justice has developed and successfully defended the ministerial level project “Building organizational and operational model of notarial information for contracts and transactions of real estate in Haiphong”, which is currently under implementation. In 2013, the Department of Justice continued to implement the project “Link of notarial information and real estate information”.

According to statistics, from 2008, the Notarial Information Division has provided nearly 200,000 information of notarized contracts and transactions related to real estate, which satisfied the requirements of information of notaries and notarization practicing organizations.

Under the leadership and facilitation of the Ministry of Justice, in 2009, Haiphong People's Committee approved and directed the Department of Justice to sign the international cooperation agreement of notarization with the Interregional Council of Notaries of Colmar and Metz, French Republic (*Conseil Interrégional des Notaires des Cours d'Appel de Colmar et de Metz Mentions Légales*). The cooperation has achieved excellent results. The two parties held seminars in Vietnam and the French Republic to share experiences of the French Republic on development planning of notarization practicing organization, building and management of notarial information of real estate, professional ethical rules, professional liability insurance for notaries, administration of notarization practicing organization and notary profession, establishment of Notary Association, etc. Thereby, Haiphong has deployed effectively knowledge and experiences in the management of organization and operation of notarization in the city (Nguyen, 2010).

The Department of Justice has helped the People's Committee implement the statistical reporting on notarization strictly at the request of the Ministry of Justice and superior agencies.

By the end of 2014, the Department of Justice in collaboration with the Institute of Legal Science (under the Ministry of Justice) held the ministerial-level seminar “*Problems of law and practice when converting notary bureaus to notary offices*”, to analyze and evaluate the operational status of the two models of notarization practicing organizations, and problems posed towards complete socialization. It is an indispensable requirement so that notarization in Vietnam can integrate with the world. Accordingly, the conversion must comply with an appropriate route, ensuring the continuity and harmonizing the interests of the State and notaries so as to promote the notarial profession of Vietnam to keep pace with the world (Haiphong Department of Justice, 2014).

**\* *Shortcomings and reasons***

The state management of organization and operation of notarization activities sometimes are not close and timely in issuing mechanisms, policies or implementation of measures to facilitate the professional development.

Besides, the relationship between the Department of Justice and other departments and agencies has not been built into smooth mechanism and regulations. There appeared some problems as the untimely exchanges of information and breaches in notarial activities.

The Law on Notarization has not mentioned or defined clearly many provisions, leading to difficulties for deployment in practice, especially in the state management. For example: centralized management issues such as unified information of notarial contracts and transactions involving real estate in the country; notarization of

contracts and transactions in foreign language or bilingual; establishment of the National Notary Association; professional liability insurance for notaries; conversion of notary office established by one notary into partnership; issue of labor contract for notaries who do not participate in the establishment of notary offices; location of notary offices.

The statistical reporting of many notary offices has not been attached particular importance such as late reporting or unsatisfactory of reports. The reason is that a small number of notaries are still not aware of the nature of notarial activities, which is on behalf of the State. It means notaries are empowered by the State and subject to the strict management of the State.

## **CHAPTER 5: ORIENTATION AND SOLUTIONS FOR IMPROVING STATE MANAGEMENT OF NOTARY OFFICES**

### **5.1. Orientation**

The advent of the Law on Notarization in 2006 has marked a breakthrough in the conception of the legislators on the legal nature and especially on the model system of notarization practicing organizations in Vietnam. Under the provisions of this law, besides notary offices, which are still operating, the law allows the existence of another model of notarization practicing organization, namely notary office. This trend is called "socialization" of notarization. Generally speaking, "socialization" of notarization means the State mobilizes social resources to involve in providing notarial services to ease the budget pressure as well as reduce the number of employees of the state administrative apparatus. Hence, the prerequisite is that the State must build a plan for the development of notarization practicing organizations in Vietnam.

Point a, Clause 2, Article 11 of the Law on Notarization regulates the provisions on "Responsibility for state management of notarization", in which, the Ministry of Justice is responsible for building and submitting to the government the policy for the development of notarization, including the construction of plans for developing notarization practicing organization nationwide. And at the local level, Department of Justice assist People's Committee of provinces and cities directly under the central management to "develop schemes for the development of notarization practicing organizations in localities to meet notarial needs of organizations and individuals"<sup>11</sup>.

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<sup>11</sup> Paragraph 1, Article 2, The Government's Decree No. 02/2008/ND-CP dated 4 January 2008 on detailing and guiding the implementation of a number of articles of the Law on Notarization.

In the market economy, providing all forms of service, including “notarial services” is developed by the rule of supply - demand but requires the State’s regulations. In Vietnam, documents of the Ninth and Tenth Party Congress also stated their inevitable intention to build “the socialist-oriented market economy”. However, "to enhance the role and effectiveness of state management" is one of the four basic requirements to build successful “socialist-oriented market economy” in Vietnam. Thus, even if the rule of supply – demand of the market economic model is applicable in planning notarization practicing organizations, the State’s regulatory element still plays an important role. Additionally, it is necessary to assess the competent state agencies’ capacity of examination and monitoring of notarization activities since there is no precedent and experience in this field. From the above analysis, the formulation of plans for the development of notarization practicing organizations and notaries plays a leading role, which determines the effectiveness of the notarial socialization policy. Moreover, the network plan for notarization practicing organizations also take into account the considerable influence of notarial services for social security as well as the stability and sustainability of the network.

It is hard to imagine the consequences in case many notarial offices are established and operated for just a few months then they terminate their operation due to lack of customers. The operational termination of notarial offices is not as simple as dissolving a private enterprise or a partnership because the notarization requires a high stability. Specifically, notarized documents (for instance loan contracts, mortgage contracts or testaments) have effectual force or value as proofs of evidence for a long time, up to ten years. Therefore, it is very difficult to deal with the consequences if at the time of the disputes regarding the contents of notarized documents, concerning notaries have stopped working or notarial offices have been



terminated. This is why the Law regulates that the contracts for leasing house as notary offices must have a minimum duration of 3 years<sup>12</sup>. In summary, there is no doubt that the building of the scheme for the development for notarization practicing organizations is an indispensable requirement, which contributes significantly to the administrative reform in the notarization area.

Implementing the policies of the Party and the State, especially the Resolution No. 48-NQ/TW dated 24 May 2005 on “*the Strategy for the Development and Improvement of Vietnam’s legal system to the year 2010 and Direction for the Period up to 2020*” and the Resolution No. 49-NQ/TW dated 2 June 2005 on “*the Judicial Reform Strategy 2020*” of the Politburo, the National Assembly enacted the Law on Notarization on 29 June 2006 with policy of socializing notarial activities, facilitating the development of notarization towards professionalization, in accordance with international standards and practices.

Through seven-year enforcement of the Law on Notarization, the policy of socializing notarial activities has been socially accepted with many positive signs. The number of notarization practicing organizations and notaries has increased rapidly. According to Ministry of Justice<sup>13</sup>, as of 3/2013, there were 625 notarization practicing organizations (including 138 notary bureaus and 487 notary offices), increased 4.77 times compared to 2007. The number of notaries rose from 353 in 2007 to 1,505 people in 2013. The notary resource meets the notary needs of individuals, organizations, contributing to legal security for contracts, transactions in the areas of economic and trade. 100% of the appointed notaries have the bachelor degree or above in law. In particular, the number of notary offices under the view of

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<sup>12</sup> Article 4 of Decree No. 02/2008/ND-CP dated 4 January 2008 of the Government on detailing and guiding the implementation of some articles of the Law on Notarization.

<sup>13</sup> See Report No. 105/BC-BTP dated 13 May 2013 of Ministry of Justice on review of 5-year enforcement of Law on Notarization 2006.

socialization has increased in provinces and expanded the network to districts towards professionalization. Notarial activities have contributed significantly to the prevention of disputes or complaints in the field of land, housing, thus, being an effectively preventive shield for legal security for a contracts or transactions, saving time and cost to society, contributing to promote administrative reform. The Notary Associations in some big cities such as Hanoi, Da Nang, Ho Chi Minh have cooperated and been twinned with Notary Council of many advanced countries in the world to exchange experiences and enhance operational efficiency of notarization.

### **Planning viewpoints**

The master plan for development of notarization practicing organizations is formulated on the basis of following closely to the strategy on 2011 - 2020 socio-economic development, in conformity with the social and economic development of each locality, aiming to satisfy the increasing notary requirements of individuals and organizations proactively.

Notarization is defined as a particular public service; notaries are appointed and authorized by the State to certify the lawfulness and authenticity of contracts and transactions, to create legal guarantees for the right and lawful interest protection of individuals and organizations in conformity with the Constitution and law as well as to prevent risks and disputes. The organization and operation in notarization must be highly stable and sustainable and be closely managed, oriented and regulated by the State under a national development master plan and be carried out properly with local master plans, ensuring that socialization of notary activities has proper steps according to the specific plans and roadmaps.

### **Planning objectives**

By 2020, it is envisioned to develop a broad network of notary practicing organizations rationally distributed in association with residential areas nationwide, fully satisfy demands of organizations and individuals in society related to notarization of contracts and transactions, and to increase the legal safety for contracts and transactions and assure for all contracts and transactions involving or possibly involving transfer of real estate ownership or use rights to have to be notarized.

Developing notarization as a professionalized and socialized public service to put the Vietnam's notarization is intended to be integrated into the region and the world, and conform to international practices.

According to the Scheme on formulation of the master plan for development of notarization practicing organizations in Vietnam through 2020, Haiphong will have 55 notarization practicing organizations, including 32 notarization practicing organizations in the period 2011-2015 and 23 organizations in the period 2016-2020. However, as of early 2015, Kien An and Hai An District exceeded one notary office for each district. Thus, by the end of 2015, Haiphong will be expected to have 34 notarization practicing organizations. Detail of expected number of notarization practicing organizations for each district is shown in the following table:

**Table 3: Plan of development of notarization practicing organizations in Haiphong to 2020**

Source: Haiphong Department of Justice, 2014

| N<br>o. | District                                   | Number of<br>wards,<br>communes<br>and towns | Area<br>(2009)<br>(m <sup>2</sup> ) | Population<br>(2009)<br>(people) | Density<br>(people/<br>km <sup>2</sup> ) | Number of current<br>notarization<br>practicing<br>organizations<br>(3/2015) | Number of<br>notarization<br>practicing<br>organizations<br>established till<br>2020 |                | Number of notarization<br>practicing organizations |  |
|---------|--|--|-------------------------------------|----------------------------------|--|--|--|----------------|--|--|
|         |  |  |                                     |                                  |  |  | 2011 -<br>2015   | 2016 -<br>2020 | 2015   | 2020   |
|         | Whole<br>city                              | 70 communes,<br>10 towns, 148<br>communes    | 1,505.74                            | 1837173                          | 1220.11                                  | 24 notary offices, 5<br>notary bureaus                                       |  |                | 34 notarization<br>practicing<br>organizations     | 55 notarization<br>practicing<br>organizations |
|         | <i>Sub-Total<br/>(Urban<br/>Districts)</i> | <i>70 wards</i>                              | <i>243.76</i>                       | <i>769,739</i>                   | <i>3,157.77</i>                          | <i>18 notary offices, 5<br/>notary bureaus</i>                               | <i>2</i>   | <i>6</i>       | <i>25</i>  | <i>31</i>                                      |
| 1       | Duong<br>Kinh                              | 6 wards                                      | 45.85                               | 48,700                           | 1,062.16                                 | 1 notary office  | 1  | 2              | 2  | 4  |
| 2       | Do Son                                     | 7 wards                                      | 42.37                               | 44,514                           | 1,050.60                                 | 1 notary office  | 1  | 2              | 2  | 4  |

|        |   |   |                        |                         |                      |                                       |                 |                  |                 |                  |
|--------|---|---|------------------------|-------------------------|----------------------|---------------------------------------|-----------------|------------------|-----------------|------------------|
| 3      | Hai An  | 8 wards                                       | 88.39                  | 103,267                 | 1,168.31             | 3 notary offices                      | 0               | 1                | 3               | 4                |
| 4      | Kien An   | 10 wards                                      | 29.6                   | 97,403                  | 3,290.64             | 2 notary office, 1<br>notary bureau   | 0               | 1                | 3               | 4                |
| 5      | Hong<br>Bang                                      | 11 wards                                      | 14.27                  | 101,625                 | 7,121.58             | 4 notary offices, 1<br>notary bureau  | 0               | 0                | 5               | 5                |
| 6      | Ngo<br>Quyem                                      | 13 wards                                      | 10.97                  | 164,612                 | 15,005.6<br>5        | 3 notary offices, 2<br>notary bureaus | 0               | 0                | 5               | 5                |
| 7      | Le Chan   | 15 wards                                      | 12.31                  | 209,618                 | 17,028.2<br>7        | 4 notary offices, 1<br>notary bureau  | 0               | 0                | 5               | 5                |
|        | <b><i>Sub-Total<br/>(Rural<br/>Districts)</i></b> | <b><i>10 towns +<br/>148<br/>communes</i></b> | <b><i>1,261.98</i></b> | <b><i>1,067,434</i></b> | <b><i>845.84</i></b> | <b><i>6 notary offices</i></b>        | <b><i>3</i></b> | <b><i>15</i></b> | <b><i>9</i></b> | <b><i>24</i></b> |
| 8      | An Duong  | 1 town + 15<br>communes                       | 98.29                  | 160,751                 | 1,635.47             | 2 notary offices                      | 0               | 2                | 2               | 4                |
| 9      | An Lao  | 2 towns + 15<br>communes                      | 113.99                 | 132,316                 | 1,160.77             | 0                                     | 1               | 2                | 1               | 3                |
| 1<br>0 | Bach<br>Long Vi                                   | -   | 4.5                    | 902                     | 200.4                | 0                                     | 0               | 1                | 0               | 1                |
| 1      | Cat Hai   | 2 towns + 10                                  | 323.1                  | 29,676                  | 91.84                | 1 notary office                       | 0               | 2                | 1               | 3                |

|        |                |                          |       |         |          |                  |   |   |   |   |
|--------|----------------|--------------------------|-------|---------|----------|------------------|---|---|---|---|
| 1      |                | communes                 |       |         |          |                  |   |   |   |   |
| 1<br>2 | Kien Thuy      | 1 town + 17<br>communes  | 107.5 | 126,324 | 1,175.10 | 0                | 1 | 2 | 1 | 3 |
| 1<br>3 | Tien Lang      | 1 town + 22<br>communes  | 191.2 | 141,288 | 738.95   | 0                | 1 | 2 | 1 | 3 |
| 1<br>4 | Vinh Bao       | 1 town + 29<br>communes  | 180.5 | 173,083 | 958.91   | 1 notary office  | 0 | 2 | 1 | 3 |
| 1<br>5 | Thuy<br>Nguyen | 2 towns + 35<br>communes | 242.8 | 303,094 | 1,248.32 | 2 notary offices | 0 | 2 | 2 | 4 |

The policy in the coming years is that the notary offices established by single notaries under Law No. 82/2006/QH11 on Notarization must be converted into partnerships (having at least 2 notaries being its partners), as prescribed in Article 79 of transitional provisions of the Law No. 53/2014/QH13 on Notarization. To implement and develop the notarization practicing organizations as scheduled earlier, state management agencies, namely the Ministry of Justice and the Department of Justice need to strengthen the inspection and examination periodically and irregularly and have support measures for the notarization practicing organizations.

## **5.2. Solutions to strengthen state management of notary offices in Haiphong**

### ***5.2.1. Common solutions***

#### ***5.2.1.1. Unified direction from the central to local levels in the field of notarization***

Unity means “Party leadership, State management, and people’s mastery”, and this may be a peculiar characteristic of Vietnam's political system as a result of the one-party state (Le M. Q., 2014). Socialization of notary activities is a part of the administrative reform and judicial reform, thus, inseparable from the leadership of the Party. The Party leads with guidelines, policies and resolutions, in order to ensure political stability, maintaining the essence of the socialist state of the people, by the people and for the people, during performing notarial socialization.

The state manages mainly by law, legal framework and legal environment for the process of socialization of notarization. Through laws, the state guarantees the socialization process, ensuring stability, order and social justice, to avoid spontaneity, anarchy, arbitrariness, destabilization of order and social justice. Autonomous role of social-professional organizations (notary management organizations) is particularly

important in the field of notary profession management, helping the State to unburden work that is not under management function, creating common standards of notarial ethics, style and profession. This organization will help notaries to be confident in their profession and to improve their role, position and prestige in society as well as for state management agencies and judicial authorities, raising the operational quality and customer service of notaries.

In the process of building and developing the country, the Party has indicated the necessity to implement administrative reforms including notarization sector, which is an important solution to achieve socio-economic development objectives. Vietnam has carried out administration reforms cautiously and gained encouraging results. Administration reform in Vietnam are deployed across multiple contents: institutional reform, administrative apparatus reform, developing and improving the quality of civil servants, public financial management reform and modernization of the public administration; administrative reform is a significant step put forward from the beginning of the reform process. Administrative procedures are related not only to the internal affairs of an agency or a governmental level, but also to organizations and citizens about the State. The rights and obligations of citizens stipulated in the Constitution or other legal documents must be passed through administrative procedures, which are regulated and directly addressed by agencies and other governmental levels. Recognizing the purpose, significance and importance of the administrative reform, the Government issued Resolution No. 38/CP dated 4 May 1994 on the initial reform of administrative proceedings that aimed at better-settling citizen and organizational affairs. Requirements of the Resolution are *"to basically improve the relationship and procedure of settling affairs among State agencies, between State agencies and other units and organizations, and between State agencies*



*and the people in receiving and settling affairs”*. Along with requirements of development and integration, administrative reform and judicial reform, in particular reform of the notary procedures are urgently needed, thus the advent of notary offices in Vietnam has been gradually shaping the contents, methods towards implementing the steps to ensure the administrative to better serving the needs of socio-economic development.

Full institutionalization of guidelines and policies of the Party and State on administrative reform and judicial reform for contents related to notary activities is shown in Resolution No. 49-NQ/TW dated 2 June 2005 on the Judicial Reform Strategy to 2020 and Resolution No. 48-NQ/TW dated 1 June 2005 on the Strategy for building and improving Vietnam’s legal system through 2020. With the objectives of *“Building an ethical, healthy, strong, democratic, strict, fair and justice-protecting judiciary as well as ensuring that the judiciary will be modernised on a step-by-step basis to serve the Socialist Fatherland of Vietnam and its people”*, Resolution No.49 was an advance of Resolution No.08/NQ-TW on judicial reform in Vietnam, reaffirming its determination to build a law abiding state.

Judicial reform must be put under the leadership of the Party and aim to maintain political stability and firmly preserve the nature of our State as a socialist rule-of-law State of the people, by the people and for the people as well as to ensure the unified power of the State, along with the distributions and collaboration between state bodies in the exercise of legislative, executive and judicial powers. Additionally, judicial reform must be carried out in a fast, comprehensive and focused manner and through solid steps.

Accordingly, the detailed tasks comprise: Improving criminal and civil policy and legislation as well as judicial procedures; Building and developing the organisational

structures of judicial organs with a focus on the organisation and functioning of the people's courts; Improving judicial support institutions; Building an ethical, healthy, and strong corps of judicial and support staff; Improving the oversight mechanism for elected bodies and enhancing the people's ownership of the judiciary; Strengthening international cooperation in the justice sector; Ensuring the availability of physical infrastructure for judicial activities; Further development of the leadership mechanism of the Party over judicial work.

In the field of notarization, the introduction of notary offices is one orientation of the public service development. The particularity of judicial activities is to maintain and uphold justice, law enforcement, to promote economic relations and to ensure human rights and civil rights. Therefore, the principle of independence and law conformance must be fully complied.

#### ***5.2.1.2. Building and improving the legal system of notarization***

Establishing and improving the legal system require creating a secure legal framework is for civil transactions in general, subsequently to anticipate the development direction to build a legal system in line with practices and to adjust all aspects relating to notarization practicing organizations and notarial activities. In establishing and improving the legal system and law on notarization, it is necessary to determine the scope and contents by conditions of socio-economic development and international and regional integration. It is an important and decisive condition for the feasibility and success of socialization of notarization in Vietnam.

As can be seen, in Vietnam, the socialization of public services, in general, the socialization of notarization, in particular, is currently new and challenging problems without precedent and experience. Therefore, implementation of socialization policy must proceed with caution, avoiding subjectiveness and duplication of any notarial

model. By and large, the most effective notarial model may not be the most advanced or modern one in the world, but must be the model corresponding to the specific conditions and identities of Vietnam, simultaneously, to international practices. Since not only socio-economic circumstances, psychological characteristics, national traditions but also the trend of international and regional integration are also strongly affecting the socialization process of notarization in Vietnam; the requirements of internationalization in notarization field have been imposed to remedy the "heresy" of Vietnam notarization institutions, compared to the notarial system in the world today.

Vietnam's socialist rule-of-law State is the state of the people, by the people and for the people, serving the people's interests. Therefore, the State law must reflect the people's will, which is represented in political institutions recognized by people. That recognition has become a constitutional principle in Vietnam legal system. Therefore, the law of socialist rule-of-law state is the institutionalization of policies and guidelines of the Party. In fact, the achievements of the process of building Vietnamese legal system for the past 20 years are closely associated with the process of improving the guidelines and policies of the Party. These directives and policies of the Party, such as the socio-economic development and strengthening defense - security, have been the basis for the formation of perspectives and strategic direction for the development of the legal system of the country. The document containing perspectives and strategic solutions for building and improving the legal system is the Resolution No. 48/NQ-TW dated 2 June, 2005 on the Strategy for the development and improvement of Vietnam's legal system to the year 2010 and direction for the period up to 2020.

Stemming from the comprehensive study of the legal system, especially its shortcomings in the requirements of building a socialist rule-of-law state, the

Politburo issued Resolution No. 48/NQ-TW, with the assessment that “the legal system in Vietnam is still not comprehensive and consistent, its validity is still low, and its implementation in practice remains slow. The mechanism for making and amending laws has many deficiencies and is still not properly observed. The speed of law-making activities is still small. The quality of the laws is not high. There is a lack of attention paid to the research and implementation of international treaties to which Vietnam is a party. The effectiveness of legal dissemination and education is limited. Institutions for law implementation are still inadequate and weak”. Among the main causes of the weaknesses as mentioned above, the Resolution emphasized the lack of strategic vision. Therefore, the Resolution No. 48/ NQ-TW identified multiple viewpoints, orientations and strategic solutions for the development and improvement of Vietnam’s legal system to 2010 and direction to the period up to 2020, with six orientations for development and improvement of the legal system and two groups of implementation measures with high feasibility (measure group of law development and one of law implementation). Since then, the work of development and improvement of the legal system has been advanced and elaborated more concretely.

However, alongside these achievements, the implementation of Resolution No. 48/NQ-TW in the last ten years has shown the lack of consistency about the enormous value of Resolution for building the socialist rule-of-law state. Some orientations, especially “Building and improving the law on the organization and operation of the institutions within the political system consistent with the requirements of building Vietnam socialist rule-of-law state of the people, by the people and for the people” and “Development and improvement of the law for the protection of human rights, freedom and democracy of citizens” have not been implemented in a comprehensive and thorough manner. The request of improving the notarial institution must be

attached to the requirements of improving the legal system in general, especially laws relating to the notarization field in order to ensure the consistency, uniform, transparency and feasibility (Contract Law, Property Law, Tax Law, etc.).

Thus, the policy of socialization and the promulgation of legal documents of the State adjusting notarial relations in recent years has shown the State's superiority in recognizing, grasping objective rules and settling social affairs towards the people, which has marked an important step in ensuring the supply of public services to organizations and individuals, improving the service quality.

In the process of policy formulation and transmitting the innovative will of the State, there have appeared the limitations and shortcomings, especially in the transmission of legal document contents to the people, to ensure the stability and long-term of the laws.

## ***5.2.2. Specific solutions for state management of notary offices in Haiphong***

### ***5.2.2.1. Improving the quality of notaries towards professionalism***

A notary is not only the person who is basically trained in law and notarial profession, having professional expertise and experience, but also have professional ethics (such as honesty, impartiality, objectivity, integrity, enthusiasm, sense of responsibility). At the same time, they must have knowledge of foreign languages and information technology to meet the increasing requirements of the society for notarization.

Notary offices need to have personnel resources operating in the field of assistance for the notarial activities and the general operation of the office. There are professional staff, accountants, treasurers, archive staff, office staff, security guards and drivers. In general, the offices follow working apparatus as the operation registration of notary office was submitted. That is considered as a factor in

determining the success or failure of notarial activities. Hence, notaries must be trained towards professionalization.

As for professional qualifications of staff working at notary offices, most notary offices have recruited and trained qualified personnel appropriate to their positions in offices to perform independent work as: Major on financial accounting for accountants, major on archives for archive staff, major on law for assistance staff in terms of customer guidance, dossier recipient, notarized document engrossment, etc. Some offices particularly attach much importance to professional training work for office staff by regular experience exchange meeting or inviting related expertise to convey experiences and assigning staff to attend training course held by Department of Justice.

The professional qualification of notaries as well as other members in offices is a hard agenda. Many offices' records got mistakes. The number of notaries who already worked in notary bureaus is relatively small, while most notaries of notary offices used to be lawyers, prosecutors and court staff who are retired. The career as legal profession of these notaries is excellent and they can grasp the procedures for certification, but it is not simple to recognize whether notarized documents are genuine or fake documents, which requires experience and time to adapt to the job. Therefore, notarial professional training for notaries as well as strengthening of knowledge exchanges in notarial activities between notary bureaus and notary offices are worthwhile and necessary to improve overall professional quality for notaries.

In the immediate future, checking and rearranging the notarization organization system as well as assessing the quality of notaries throughout the country are necessary to take measures to enhance, improve and strengthen the organization of notary offices and have policies for training and retraining notaries towards

professionalism. It is also essential to evaluate promptly the effectiveness of state management of organizations in charge of notarization and authentication, to define clearly the authority, decentralization, and the responsibilities of related parties. Accordingly, it is requisite to establish a notarization professional organization to separate state management competence and notarial professional management jurisdiction to reduce management burden for the state.

Faced with the above requirements, to enhance the quality of notaries towards professionalism, a strategic plan of comprehensive training need to be implemented, at first, making program, standard curriculum, professional trainers, combination of theory and practice in teaching, at the same time, innovating policy regime for notaries, creating incentives for notaries to promote positive, proactiveness, and professional responsibility.

#### ***5.2.2.2. Establishment of Notarization Association***

Six years after the promulgation of Law on Notarization (2006), the first notary office in Haiphong was established in July 2009. Up to this time, Haiphong has 24 notary offices, operating under the model of private enterprises and partnerships. Thanks to the operation of these offices, the workload of 5 notary bureaus has decreased significantly, contributing positively to the socio-economic development of the city.

At this time, there is no Notary Association in Haiphong. Therefore, it seems that there is no connection or information sharing among notarization practicing organizations. So first and foremost, the Department of Justice needs to require five notary bureaus to have connection/contact with each other, and then in some cases, preventive information can be shared with notary offices. From the management viewpoint, it is obvious that this is a legitimate need to ensure that the contracts or

transactions are not duplicated. Moreover, information sharing can help prevent misconduct cases; for instance, one contract should not be processed at two different notary offices. Recognizing the importance of the matter, the Department of Justice needs to build a shared network database, yet it requires significant funding. The department also plays a role as a focal point to prepare the organization and staffing for building the projects to establish Haiphong Notary Association actively.

As of October 2014, Haiphong has five notary bureaus and 19 notary offices with a total of 46 notaries, concentrated mainly in the inner city. It is essential to facilitate the establishment of Notary Association as an organization that protects the rights of notaries and unifies the activities for the notarization practicing organizations. Notary Association will take a core role in sharing of professional information between notarization practicing organizations and addressing the internal relations in the notary offices. Notary Association established with the function of professional guidance would solve difficulties and obstacles for notaries, which is, of course, more favorable for notaries in performing their duties. On the other hand, the prestige of the Association will increase the confidence of notarial requesters with notarial activities.

Therefore, the need to establish the Notary Association is undeniable. Firstly, notary association must be set up in each locality, followed by the establishment of National Notary Association. On one hand, this is both a link and a common forum for notarization practicing organizations to share experiences and information. On the contrary, this is a place gathering the voices to contribute to the State for the management initiatives and findings of the problems arising in practice to find solutions. Moreover, the association's permanent members must be appointed from the notarization practicing organization, because, they are knowledgeable about the notarization. Accordingly, the State, through the Notary Association, possibly



performs its management function indirectly. Alternatively, the Notary Association can share the management responsibility of the State partially.

The establishment of many notarization practicing organizations on the same territory without planning network inevitably leads to competition between these organizations. The Notary Association will reconcile interests among its members and limit unfair competition.

The establishment of the Notary Association has been a longstanding common aspiration of notary offices and notary bureaus to protect the rights of notaries. For the reasons above, the establishment of Notary Association is necessary and inevitable, ensuring notary offices a premise for sustainable development and long-term stability.

Some provinces and cities in the country, today have established Notary Association and demonstrated a positive role in the overall operation of the local notary. In particular, Hanoi and Ho Chi Minh City are the two localities where there are the largest number of notaries and notarization practicing organizations. The establishment of Notary Association in these two pioneering cities is a premise to establish Notary Association in other localities as well as National Notary Association. Haiphong currently has 29 notarization practicing organizations, expected to grow to 55 organizations by 2020. Hence, the establishment of Notary Association in Haiphong is pivotal necessary.

#### ***5.2.2.3. Building a database for Notary Association***

Along with the establishment of the Notary Association, an equally important job is to build a database for the Notary Association. It is considered as another connection form to help minimize risks in notarial activities. Since the Law on Notarization was passed, alongside the model of notary bureaus is the model of notary offices. Notary bureaus have tighter relationships and a better sharing of information

and experiences as they are all directly under the Department of Justice. Meanwhile, the notary offices are completely independent of each other and independent from notary bureaus as well. Therefore, the coordination and sharing of experiences and information with each other are really difficult. To be a measure of risk prevention, which is essential to ensure safety for both notarization practicing organizations and the notarial requester, the mechanism of sharing information in notarial activities has not been regulated by law.

Currently, the notarization of contracts and transactions related to real estate as well as some sensitive areas is pretty messy and there is lack of cohesion between the notarization practicing organizations. Even there is some irregular professional operations seen such a phenomenon under which one contract that was rejected in one notary office due to preventive information or invalid documents but was accepted by another notary office. More seriously, the phenomenon that one asset is notarized in many notarization practicing organizations with different requesters is not rare. This fact has demonstrated the existence of some notaries who are lacking professional qualifications and ethics to profiteer. Hence, the suspicion of the notarial requester as well as the relevant authorities for notarization practicing organizations remains.

To put an end to this situation and to enhance the professionalism of notarial activities in the coming years, the provinces and cities directly under the central government have to build a database and share preventive information in their local activities, and on that basis, it is expected to build notarial information networks nationwide.

#### ***5.2.2.4. Building common archive notarial records for the city***

Associated with the construction of a database for the Notary Association, it is necessary to build notarial records repository for the city. That is also a facility

condition for notary offices to operate, as regulated by the Law on Notarization about strict preservation of notarial records. The originals of notarized documents and other papers in notarial records must be preserved for at least 20 years at head offices of notary practice organizations.

However, a difficult issue is that not every notary office from its establishment has sufficient facilities. For example, just a few notaries have their property to establish an office on it; the majority must rent offices for their notarial operation with the high expense. Not to mention to the dossier records, this is one of the key issues of notarization. Dossier records show how many times a transaction was made and the status of the transaction. Recently, through the inspection, many offices did not meet facility conditions; dossier records are lacking. In fact, many swindlers took advantage of the weakness of the dossier records to commit fraud, resulting in severe impacts to the civil transactions. This is a general difficulty of notary offices, so the State, the Ministry of Justice and the Department of Justice should find a solution to ensure secure transactions, avoiding consequences of difficult recovery and directly affecting the people's trust once such a case occurs. The State should set up a storage center for all notarization practicing organizations to submit dossiers. Networked information between offices would reduce the risks. In the era of informatics, also many offices manages records manually due to lack of facility conditions, and in the spirit of socialization, the State should assist to solve social issues and put the interests of the people above. Objectively, the customer sentiment remains cautious and skeptical in discriminating between notary bureaus and notary offices. Meanwhile, nascent notary offices have faced difficulties in finance, finding customers and building a brand.

With unique features of Haiphong, to have an operational office with archive storage is a significant issue. In the meantime, with the requirement that notarial records must be preserved for at least 20 years, the volume of records is increasing enormously, and thus, the dossier preservation has become a challenge for notary offices and state management agencies. Therefore, the Department of Justice must be a focal point for professional guidance concerning judicial matters, setting up a common archive repository to facilitate the examination and inspection of notary offices' activities.

## CONCLUSION

The advent of notary offices has confirmed the important role for the growth, development, and stability of an economy, yet, followed by adverse effects that developing countries have recognized. Therefore, the role of state management for notary offices is essential and urgent for the sustainable development and long-term stability of the whole society.

With the policy of socialization of public services, in general, the socialization of notary service is a relatively new subject in Vietnam today. The literature pointed out that the actual legal framework and operation in Vietnam is consistent with other Latin style countries.

Socialization of notarization is the process that the State innovates the mode of organization and operation of notarization and gradually transfers notarial activities to individuals and non-state organizations to improve the efficiency of notarization, corresponding to the requirements of market economy and international integration. Thus, socialization of notarization is the elimination of the state monopoly in the field of notarization. In that process, the State phases out gradually from the direct provision of notary service and proceeds to transfer completely to non-state units. The State merely plays a unique role of management. That has contributed to distinguishing between the function of state management and notary management. The State strengthens the management by law, establishing institutions and creating a legal environment to ensure business freedom and to create a healthy competitive environment in notarization activities.

The introduction of notary office model has created favorable conditions for all citizens to have justice and equal access to notary service, removing the people's hesitant psychology. It must be conceded that the advent of notary offices is

regarded as a revolution in the field of notarization in Vietnam, which has marked an obvious advance in the development and formation of the Vietnam's notarization. The conversion from state notary offices to private notary offices can be seen in other countries which underwent transitional economy such as China, Russian, Cuba. Meanwhile, as other countries in the world, this model has evolved for a long time. In Vietnam, just starting from the promulgation of the Law on Notarization in 2006, the existence of two parallel systems has been acknowledged: besides notary bureaus founded by the State from the 1990s with notaries public, notary offices have been established gradually with notary as a liberal profession under the management of the State.

With the qualitative research method, referring to the regulations and practical operation of notarization in Vietnam and Haiphong and operational model of notarization of some countries in the world, the thesis has clarified the issues outstanding in the provisions of the Law on Notarization as well as practices in Haiphong City. The development of the notarial system is associated closely with the development of state management of notarization. So far, notarization practicing organizations established throughout the country have satisfied to some extent the requirements for certificating contracts and civil transactions of individuals and organizations. In fact, activities of notary offices have been gradually professionalized; people's access to notary services is more convenient and faster; the irregularities in the operation of notarization are negligible. Hence, notary offices have gained confidentiality for most of the citizens. That fact proves that the state management of notary offices has been implemented appropriately in agreement with the State's policy and the development of the country. However, compared with notarization of the country with the development of hundreds of years, notary office

model in Vietnam is still too fledgling, which requires further research along with practical development. Therefore, I hope that the findings of the thesis “*State management of notary offices. Case study of Haiphong City, Vietnam*” will contribute to the innovation and improvement of state management of notary office model in the promulgation of management documents, organization and implementation, inspection, examination, handling of violations, etc. At the same time, this thesis is expected to make a foundation for further researches in the field of notarization of Vietnam in the new era - a key stage of Vietnam in the international arena.

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