

**Extract of minutes of meeting of Administration of Justice
and Legal Services Panel held on 20 June 2000**

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VI. Admission of Notaries Public in Hong Kong

(LC Paper No. CB(2)2359/99-00(05) - Paper provided by the Administration; and; LC Paper No. CB(2)2404/99-00(01) - Letter dated 16 June 2000 from the Law Society of Hong Kong)

47. The Chairman informed members that she had proposed to discuss this item as a result of having received a letter from a member of the legal profession expressing concern about the rules and regulations relating to the admission of notaries public which had yet to be put in place following the passage of the Legal Practitioners (Amendment) Ordinance 1998. The amendment ordinance empowered the Council of the Society of Notaries (the Society) to make rules to provide for the requirements for appointment as a notary public. She asked the Administration to explain the long time taken to draft the rules and the likely timing for finalizing the rules.

48. SASG briefed members on the Administration's paper which explained the present position of the matter. He advised that in accordance with the policy responsibility for the Legal Practitioners Ordinance, the Legal Policy Division of the D of J would prepare drafting instructions upon receipt of the drafting proposals from the Council of the Society. The Law Draftsman, who had the duty to ensure that the proposal for new legislation was conceptually sound and legally effective, would in turn act on the finalized drafting instructions to transform the drafting proposals into legislation. He added that seven sets of rules and regulations needed to be made under the Ordinance. The drafting process was near completion in respect of four sets of rules. Proposals and clarifications in respect of the other three sets of rules were being examined by the D of J. It was difficult for the Department to estimate the timing for the rules to be finalized but it would endeavour to finish the task as soon as possible.

49. At the invitation of the Chairman, Mr Lester HUANG of the Society explained the complications in preparing the draft rules which were summarized as follows -

- (a) It was a challenging task for the Society to draft the rules and regulations because there were no precedents on which any of the rules could be based. The Society had to spend time to properly identify the relevant parameters which the new rules would need to define, and to integrate these into sensible directions for instructions to be drawn up for the Law Draftsman;

- (b) Before the reunification, notarial examinations had never been staged in Hong Kong. They were set and marked in England under the auspices of the Faculty Office of the Archbishop of Canterbury. The syllabus was what it then was in the UK. As Hong Kong had now become an SAR of the People's Republic of China, a country whose jurisprudence with regard to notaries public was somewhat different, notarial practice in Hong Kong had also changed. Much time and effort therefore had been put into researching into the syllabus for the examination, and developing the literature and courses which potential candidates would find relevant and helpful in preparing for the examination. The logistics of holding an examination in Hong Kong were also daunting;
- (c) Concerning the rules for admission, they had to be worked out afresh because of the severance of the link with their counterparts in the UK. The Society had to ensure that the new mechanism, which departed from then existing practices, would work satisfactorily;
- (d) On the professional indemnity rules, which required notaries public to be properly insured for the protection of members of the public, the Society had to conduct detailed discussions with its members, the Law Society as well as the Administration with a view to working out arrangements to be included in the rules so that notaries could continue to practise without undue burden; and
- (e) Regarding the disciplinary proceedings rules, the new legislation provided for a disciplinary conduct mechanism. The Society had referred to many sets of disciplinary rules including those for solicitors and barristers in Hong Kong. Considerable time had been spent in designing a system which would meet the specific requirements of the notaries in Hong Kong.

50. In response to the Chairman, Mr Lester HUANG advised that there was an increase in the number of notaries public after the reunification. The increase reflected the number of people who had passed the relevant examination for admission before 1 July 1997 but who applied for admission after the reunification. Apart from these, there had been no new admissions after the reunification.

51. Mr Albert HO declared interest as a member of the notaries. He opined that in view of the above-mentioned constraints faced by the Society in drafting the rules, the Administration should assist in every possible way to put in place a new regime as early as possible. Echoing his view, the Chairman asked what assistance had been rendered by the Administration in this regard.

52. Government Counsel replied that the D of J had played an active part in studying and advising on the various proposals put forward by the Society. Detailed

discussions between the two resulted in a lot of rethinking and consequentially substantive amendments to the proposals. The Administration was of the view that other than those technical and legal aspects with respect to the drafting of the rules on which it could provide advice and assistance, matters relating to the content of the rules should better be left to the autonomy of the Society itself.

53. Mr Lester HUANG said that the Society had been working closely with the D of J which had provided the assistance the Society had asked for. He reiterated that much of the problems encountered stemmed from the fact that the Society, in formulating the draft rules, had to start off "with a clean slate".

54. The Chairman said that she had not originally anticipated the difficulties faced by the Society to be of such an extent as explained by the Society. She requested the Society to prepare a paper to set out an overview of the Society's proposals and the progress which had been made concerning the draft rules. She suggested that the paper could be discussed by this Panel in the new term of LegCo.

Society of
Notaries

VII. Any other business

55. The Chairman said that this being the last meeting of the Panel in the current LegCo term, she wished to take the opportunity to thank all parties concerned, including all members of the Panel, the Administration, the two legal professional bodies as well as the staff of the LegCo Secretariat and the Simultaneous Interpreters, for their contribution to the work of the Panel.

56. There being no other business, the meeting ended at 6:45 pm.

Legislative Council Secretariat

6 September 2000