

**REPORT  
TO THE LEGISLATIVE COUNCIL PANEL ON  
ADMINISTRATION OF JUSTICE AND LEGAL SERVICES**

1. At the meeting of the Legislative Council Panel on Administration of Justice and Legal Services on 20 December 2001, the Society agreed to revert to the Panel on the contents of the Rules and the result of the consultation in due course.

**[Copy Paragraph 26 of the Minutes of the meeting of the Panel held on 20 December 2001 – Appendix 1]**

2. The drafting of the 8 sets of the Rules have been finalized and are annexed to this Report for the Panel's consideration. The draft Rules include:-
  - (a) Notaries Public (Practice) Rules
  - (b) Notaries Public (Examination) Rules
  - (c) Notaries Public (Practising Certificate) Rules
  - (d) Notaries Public (Qualification for Appointment) Rules
  - (e) Notaries Public (Disciplinary Tribunal Proceedings) Rules
  - (f) Notaries Public (Grounds for Refusal to Issue Practising Certificate) Rules
  - (g) Admission and Registration (Amendment) Rules
  - (h) Legal Practitioners (Fees) (Amendment) Rules

**[Copy 8 sets of the draft Rules - Appendix 2]**

3. Subsequent to the Panel meeting on 20 December 2001 as stated in paragraph 1 above, consultation had been launched and ended in August 2002. The result of the consultation is set out in paragraph 4 below.
  - (a) The list of respondents is annexed to this Report as Appendix 3.
  - (b) It is noted that the Panel had been informed of the consultation exercise and by a letter dated 9 September 2002, the Society was informed that the members of the Panel had no comments on the Consultation Paper.

**[Copy of the letter dated 9 September 2002 – Appendix 4]**

- (c) Some of the respondents who had responded to the consultation had no comment on the draft Rules. They are Hong Kong Institute of Arbitrators, The University of Hong Kong (Faculty of Law), Hong Kong International Arbitration Centre, Hong Kong Bar Association and Legal Aid Department.
  - (d) The comments given by the all other respondents had been considered by the Council and appropriate action taken. The summary of the comments of the respondents and the follow-up actions are set out in the following paragraph.
4. Summary of the comments of the respondents and follow-up actions taken:-

(a) **Statute Law (Miscellaneous Provisions) Ordinance 2002**

**Comment Received** – Given the Statute Law (Miscellaneous Provisions) Ordinance 2002, appropriate revisions should be made to the draft Admission and Registration (Amendment) Rules and Notaries Public (Disciplinary Tribunal Proceedings) Rules to reflect the transfer of power from the Chief Justice to the Chief Judge of the High Court.

**Action Taken** – All the current version of the draft Rules have been revised to reflect the transfer of the power from the Chief Justice to the Chief Judge of the High Court where appropriate.

(b) **Notaries Public (Practice) Rules**

- (i) **Comment Received** – It is unclear as to when the time of 14 days started to run under Rule 7(2)(a) as Rule 7 seems to be excluded by Rule 1.

**Action Taken** – Clarification has been made in Rule 1 that the reference to Section 7 therein is a reference to Section 7 of the Legal Practitioners (Amendment) Ordinance 1998.

- (ii) **Comment Received** – Rule 4 prohibited against promotion of notarial practice.

**Action Taken** – Rule 4 has been redrafted to allow practice promotion within defined limits and a Schedule is added to set out the guidelines for such promotion.

- (iii) **Comment Received** – Some respondents raised concern on the scale fee.

**Action Taken** – The part regarding scale fee had already been deleted from the legislation prior to the consultation exercise so that there will be no statutory scale fee in place.

- (iv) **Comment Received** – Concern was raised on the Council's power to request for inspection of financial record under Rule 9(1).

**Action Taken** – The Council is of the view that whilst there is no mandatory requirement for financial records to be kept, if such record exists and in appropriate circumstances, there may be a need for the Council to inspect the same.

- (v) **Comment Received** – Concern was also expressed on the possible breach of client's confidentiality in releasing client's documents in compliance with Rule 9.

**Action Taken** – It is the Council's view that the need to invoke this power is quite remote as evident from history; the non-compliance by the notary of the legislative provisions might not touch upon the question of confidentiality or privilege; and if the complainant were the client he or she would probably have waived the privilege.

- (vi) **Comment Received** – There was concern that under Rule 9(4) a complainant might be required to make a deposit for lodging a complaint.

**Action Taken** – The Council is of the view that such requirement is necessary and may be warranted in appropriate cases to guard against unjustifiable claims.

(c) **Notaries Public (Qualifications for Appointment) Rules**

- (i) **Comment Received** – Concern was expressed on the requirement for the application for a letter of no objection to be endorsed by 30 persons of good standing under Rule 4(2).

**Action Taken** – The requirement is not something new but is borrowed from the previous admission regime; and whilst the number of 30 may be considered as

arbitrary, one would appreciate that a line has to be drawn somewhere. The requirement to secure the support of 5 judicial officers is not particularly onerous given the number of years of practice that the applicant should have and the wide definition of “judicial officers”.

- (d) **Comment Received** – Query was raised as to why the qualification requirement should be 7 years rather than 10 years of continuous practice as solicitors under the proposed new Rule 12B(3) of the **Admission and Registration (Amendment) Rules**. It is noted that this requirement has already been enacted under the new Section 40A(1) of the Legal Practitioners Ordinance.

**Action Taken** – The Council is of the view that this only reflects the immediate past practice and no amendment is called for.

- (e) **Notaries Public (Disciplinary Tribunal Proceedings) Rules**

**Comment Received** – There was a proposal for increased participation in the complaints screening panel and the Notaries Public Disciplinary Tribunal, so that at least 50% of the seats be taken up by members of the public.

**Action Taken** – The Council does not agree with this view. Like other self-regulatory profession, members of the disciplinary body are required to have an in-depth understanding of notarial practice, which involves technical legal knowledge.

5. The Chief Justice has been consulted after the Council had taken into consideration and had taken action in respect of the comments set out in paragraph 4 above. The Chief Justice approved the 8 sets of the draft Rules subject to two comments and a direction, which are set out in the following sub-paragraphs.

- (a) **Comment Received** – Rule 12D(5) of the **Admission and Registration (Amendment) Rules** should be amended to read as (proposed amendment in bold italics) “As soon as practicable after the Chief Judge *or the judge designated by him under section 40A(4A) of the Ordinance* has determined the application, the Registrar shall serve a copy of the relevant order on the applicant.”. This is to achieve drafting consistency with rule 12E of the draft Rules, which also makes reference to the Chief Judge or the judge designated by

him to appoint notaries public.

**Action Taken** – The relevant rule has been amended in accordance with the suggestion of the Chief Justice.

- (b) **Comment Received** – To clarify whether the **Notaries Public (Grounds for Refusal to Issue Practising Certificate) Rules** should be made by the Council of the Hong Kong Society of Notaries under the new section 73D of the Legal Practitioners Ordinance with the Chief Justice's prior approval instead of by the Chief Justice under section 72 of the Legal Practitioners Ordinance as drafted.

**Action Taken** – The relevant rules are to be made by the Council of the Hong Kong Society of Notaries under the new section 73D of the Legal Practitioners Ordinance with the prior approval of the Chief Justice.

- (c) The Chief Justice also directed the Hong Kong Society of Notaries to revert to the Panel on the 8 sets of the draft Rules (with suitable amendments incorporating his comments).
6. The Panel is invited to consider the 8 sets of draft Rules as set out in paragraph 2 above (i.e. **Appendix 2**) with a view to enabling the draft Rules to be tabled for negative vetting as soon as possible.
7. The Society of Notaries welcomes any comments and views on the draft Rules and is prepared to respond to queries raised by the Panel.

**Submitted by Hong Kong Society of Notaries**  
**April 2004**

## Appendix 1

## DRAFT

立法會  
*Legislative Council*

LC Paper No. CB(2)/01-02

Ref: CB2/PL/AJLS

**Legislative Council  
Panel on Administration of Justice and Legal Services**

**Minutes of meeting  
held on Thursday, 20 December 2001 at 8:30 am  
in Conference Room A of the Legislative Council Building**

**Members Present :** Hon Margaret NG (Chairman)  
Hon Jasper TSANG Yok-sing, JP (Deputy Chairman)  
Hon Martin LEE Chu-ming, SC, JP  
Hon James TO Kun-sun  
Hon Miriam LAU Kin-yee, JP  
Hon Emily LAU Wai-hing, JP  
Hon Audrey EU Yuet-mee, SC, JP

**Members Absent :** Hon Albert HO Chun-yan  
Hon Mr Ambrose LAU Hon-chuen, GBS, JP

**Public Officers Attending :** Item III  
Mr Michael SCOTT  
Senior Assistant Solicitor General  
  
Ms Kitty FUNG  
Senior Government Counsel  
Legal Policy Division

Item IV  
  
Mr Andrew H Y WONG, JP  
Director of Administration  
  
Miss Eliza LEE  
Deputy Director of Administration

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Action  
Column

23. Mr Lester HUANG supplemented that the work of notaries public involved not just the mere attestation of documents. It also included research on the different attestation requirements for the documents and the preparation of a notarial certificate to go with the documents to meet the specific requirements of the particular jurisdictions in which the documents were to be used etc.

24. The Chairman sought members' views on the Society's intention to leave the issue of mandatory professional indemnity aside at the moment and to proceed with the implementation of the other necessary rules so that the Society could start to admit new notaries public as soon as possible.

25. Members raised no opposing views. Mr Martin LEE and Ms Audrey EU considered that there was unlikely to be a serious risk arising from lack of indemnity cover for notarial practice. Ms Miriam LAU said that it did not seem to be necessary to introduce any mandatory indemnity scheme in view of the no claim situation in Hong Kong. She opined that the issue of compensation for professional negligence should better be left to the individual notaries public concerned.

✓ 26. In response to Ms Emily LAU, Mr Lester HUANG said that the Society of Notaries would consult its members on the draft rules. At the Chairman's request, he agreed to revert to the Panel on the contents of the rules and the result of consultation in due course.

#### IV. Reciprocal enforcement of judgments in commercial disputes

(LC Paper Nos. CB(2)722/01-02(04) and (05); LS25/01-02)

27. The Chairman declared interest as she was at present handling a case involving enforcement of a Mainland judgment in Hong Kong.

Schedule

1. Hong Kong Family Law Association
2. Association of China-appointed Attesting Officers Ltd.
3. Hong Kong International Arbitration Centre
4. Hong Kong Institute of Arbitrators
5. Chartered Institute of Arbitrators
6. International Law Association
7. Medico-Legal Society
8. Amnesty International – Hong Kong Section
9. Justice (Hong Kong Branch)
10. The Law Society of Hong Kong
11. Hong Kong Bar Association
12. The Hong Kong Young Legal Professionals Association Ltd.
13. The Hong Kong Federation of Woman Lawyers
14. Legal Aid Department
15. The Hong Kong Conveyancing and Property Law Association Limited
16. The School of Law of the City University of Hong Kong
17. The Department of Law of Hong Kong University
18. The Association for the Development of Law of China and Hong Kong
19. The Consumer Council
20. Hong Kong Institute of Bankers
21. Federation of Hong Kong Industries





中華人民共和國香港特別行政區  
Hong Kong Special Administrative Region of the People's Republic of China

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法會  
LEGISLATIVE COUNCIL

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文傳真 FACSIMILE :

Appendix 4

(By fax and by post)

Total : 1 page

9 September 2002

The Hong Kong Society of Notaries  
(Attn : Ms Christine CHU)  
3/F, Wing On House  
71 Des Voeux Road  
Hong Kong

Dear Ms CHU,

**LegCo Panel on Administration of Justice and Legal Services**

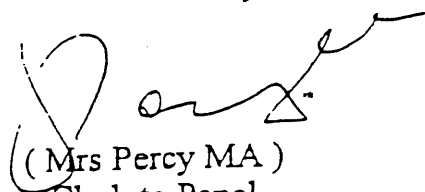
**Consultation Paper on the Legal Practitioners  
(Amendment) Ordinance 1998 - Subsidiary Legislation**

I refer to your letter dated 26 July 2002 to the Panel Chairman concerning the above subject.

On behalf of the Chairman, I write to inform you that members of the Panel have no comments on the Consultation Paper. While the Panel has considered the policy aspects of the Rules, you may wish to note that the Rules are subject to the negative vetting procedure of the Legislative Council upon gazettal. It is for the House Committee to decide whether a subcommittee should be set up to scrutinise the Rules.

With best regards,

Yours sincerely,

  
( Mrs Percy MA )  
Clerk to Panel

c.c. Hon Margaret NG (Chairman)