

立法會
Legislative Council

LC Paper No. LS41/04-05

**Paper for the House Committee Meeting
on 18 March 2005**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 11 March 2005**

Date of Tabling in LegCo : 16 March 2005

Amendment to be made by : 6 April 2005 (or 4 May 2005 if extended by resolution)

Legal Practitioners Ordinance (Cap. 159)

Admission and Registration (Amendment) Rules 2005 (L.N. 28)

Legal Practitioners (Fees) (Amendment) Rules 2005 (L.N. 29)

Notaries Public (Disciplinary Tribunal Proceedings) Rules (L.N. 30)

Notaries Public (Grounds for Refusal to Issue Practising Certification) Rules (L.N. 31)

Notaries Public (Practising Certificate) Rules (L.N. 32)

Notaries Public (Examinations) Rules (L.N. 33)

Notaries Public (Practice) Rules (L.N. 34)

Notaries Public (Qualifications for Appointment) Rules (L.N. 35)

Commencement

These eight sets of Rules relating to notaries public are made consequent upon the passage of the Legal Practitioners (Amendment) Ordinance 1998. The Amendment Ordinance deals with the appointment, powers, registration and discipline of notaries public and the making of rules. It also provides for the continuation of the right of any person who was a notary public immediately before the commencement of sections 3 and 4 of the Amendment Ordinance to practise as a notary public on and after the commencement.

2. Other than Notaries Public (Practice) Rules (L.N. 34), the remaining seven sets of Rules would come into operation on the day appointed for the commencement of the Amendment Ordinance (other than sections 1 and 7 of the Amendment Ordinance). The date of commencement is intended to be 30 June 2005.

3. L.N. 34 would come into operation on the 91st day thereafter and would apply to those persons who are notaries public immediately before commencement of the Amendment Ordinance. This is to give sufficient grace period for notaries public to comply with the obligations imposed under L.N. 34, including the giving of written notice of certain particulars to Hong Kong Society of Notaries (“the Society”).

Effect of the Rules

4. **L.N. 28** is made by the Chief Justice to amend the Admission and Registration Rules (Cap. 159 sub. leg. B). It prescribes the manner in which a person may be appointed as a notary public and provides for the registration of notaries public by the Registrar of the High Court.

5. **L.N. 29** is made by the Chief Justice to amend the Legal Practitioners (Fees) Rules 2005 (Cap. 159 sub. leg. D). It prescribes the fees payable for the registration of notary public and the application for appointment as notary public.

6. The remaining six sets of Rules are made by the Council of Management of Hong Kong Society of Notaries with the prior approval of the Chief Justice.

7. **L.N. 30** makes provisions for the conduct of any inquiry by a Notaries Public Disciplinary Tribunal. Under the Amendment Ordinance, the Tribunal shall constitute 2 notaries public and one lay person.

8. **L.N. 31** prescribes the grounds on which the Society may refuse to issue a practising certificate to an applicant. **L.N. 32** specifies the documents that a person is required to submit when applying for a practising certificate as a notary public. It also prescribes the form of the certificate and the fee payable for its issue.

9. **L.N. 33** makes provisions regarding the examination to be passed by persons who apply for appointment as notaries public. The subjects of examination are bills of exchange and notarial practice. A person must pass both subjects in a single examination. Examination fees are also prescribed. According to the Department of Justice, bills of exchange should be a subject because traditionally, it is one of the examination papers in England, and notaries public have specific professional duties under the Bills of Exchange Ordinance (Cap. 19). According to the information given by the Society to the Panel on Administration of Justice and Legal Services (“the Panel”), The Scriveners Company in England will continue to provide examiners to set and mark the papers.

10. **L.N. 34** provides for the professional practice and conduct of notaries public, including:

- (a) the general standard of conduct for notaries public;
- (b) the circumstances under which practice promotion by notaries public or firms is permissible, which are similar to the Solicitors' Practice Promotion Guide;
- (c) letters issued in connection with notarial works;
- (d) prohibition against profit sharing with persons who are not notaries public or solicitors;
- (e) notification of specified particulars to the Society; and
- (f) the register of records of notarial works.

11. **L.N. 35** prescribes requirements that have to be complied with by a person applying for appointment as a notary public. The requirements include a letter of support endorsed by at least 30 signatories among whom at least 5 must be judicial officers and at least 10 must be practising notaries public, solicitors or barristers.

Comments

12. The power to appoint a notary public rests with the Chief Judge of the High Court, hence an applicant may make an application even though he has not been issued with a letter of no objection by the Society or that such letter has been issued but subsequently revoked. The Rules provide that an applicant may provide other particulars that he considers relevant to his application. The Chief Judge may grant an application if he considers the applicant to be a fit and proper person to be a notary public.

13. The Council of Management has decided that there is no urgency for introducing professional indemnity rules under the Amendment Ordinance, having considered:

- (a) that there is no statutory requirement for notaries public to maintain professional insurance;
- (b) that the majority of notaries public are practising solicitors and would thus be covered under the Solicitors' Indemnity Scheme. Many of those not covered do not reside in Hong Kong and are not entitled to practise as notaries public. Many have retired from the practice and just wish to retain their status as notary public. The Society is of the view that those few notaries public who are not practising as solicitors would not normally engage in high-risk work and are sufficiently senior to practise as notaries public competently; and
- (c) that notaries public would not handle clients' monies in the course of their practice and so far they have a no-claim record.

14. One of the requirements for admission is that a person's name has to be on the roll of solicitors continuously for the whole of the period of 7 years immediately before the date of his application for appointment as a notary public. An application for a practising certificate, however, does not require an applicant to be a practising solicitor. The Society indicates that it would keep in review the increase in the number of practising notaries public who are not practising solicitors and determine when indemnity rules should be made.

Consultation with LegCo Panel

15. The Society briefed the Panel on the progress of the drafting of these eight sets of Rules at the Panel meetings on 20 June 2000 and 20 December 2001. Members sought explanation from the Society on, inter alia, examinations for the admission as notaries public and the necessity for making rules on professional indemnity for notaries public. Members of the Panel had no opposing views on the Society's decision not to make indemnity rules. The Society agreed to consult its members on the draft Rules and inform the Panel on the outcome of the consultation exercise.

16. A consultation paper on the draft Rules prepared by the Society was circulated to the Panel on 21 August 2002. In April 2004, the Society provided a report which summarized the comments of the respondents on its consultation paper for the Panel's information.

17. At its meeting on 24 May 2004, the Panel agreed that it was not necessary to discuss the draft Rules as the Panel had already considered the policy aspects of the Rules at previous meetings. It would be a matter for the House Committee to decide whether a subcommittee should be formed to study the Rules.

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