

**For information on
20 June 2000**

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

**Regulations concerning the Admission of Notaries Public
to be made under the Legal Practitioners (Amendment) Ordinance 1998**

Introduction

By a letter dated 17 May 2000 from the Clerk to the Panel on the Administration of Justice and Legal Services of the Legislative Council, the Administration has been asked to explain the reason why the rules and regulations concerning the admission of notaries public have not yet been made despite the passage of the Legal Practitioners (Amendment) Ordinance 1998 (the Ordinance) which empowers the Council of the Society of Notaries (Council of the Society) to make rules providing for the requirements for appointment as a notary public. The Panel has requested a briefing to be prepared on matters including the reasons for the long time taken to draft the rules, the present position and the likely timing for finalizing the rules.

Reasons for taking a long time to draft the rules

2. The Ordinance authorizes the Council of the Society to make rules for the requirements for appointment as a notary public. However, the Legal Policy Division of the Department of Justice has policy responsibility for the Legal Practitioners Ordinance (Cap. 159). It has been agreed that the Legal Policy Division would prepare Drafting Instructions upon receipt of instructions from the Council of the Society of Notaries. The Ordinance further provides that the Chief Justice may make rules prescribing the manner of appointment as a notary public. The approval in principle of the Chief Justice is therefore sought before the rules to be made by Council of the Society are prepared.

3. Seven sets of rules need to be drafted under the Ordinance. In addition to the Appointment and Registration Rules, the other six rules are the Notaries Public Practice Rules, the Practising Certificates (Notaries Public) Rules, the Practising Certificates (Notaries Public)(Grounds for Refusal) Rules, the Notaries Public Disciplinary Tribunal Proceedings Rules, the Notaries Public (Professional Indemnity) Rules and the Notaries Public Examination Rules. In order to enable the Administration to prepare Drafting Instructions, the Council of the Society forwarded its proposals to the Administration in batches, beginning in September 1998.

4. Since those proposals were in the form of draft rules, they needed to be transformed into proper drafting instructions in order to enable the draftsman to function effectively. This process involved further correspondence with the Council of the Society to ensure that the drafting instructions reflected its intentions.

5. In due course, the drafting instructions were passed to the Law Draftsman who has the duty to ensure that the proposal for new legislation is conceptually sound and legally effective. As in other cases, the Law Draftsman has sought clarification and further details on the Drafting Instructions in writing. Meetings with Council Members were also held by the Administration and the Law Draftsman for clarification and further information. When replies from the Council were received, further clarification and additional information were sometimes required by the Law Draftsman.

6. The function and role of the Law Draftsman is to act on instructions. It is not his task to initiate proposals for the Society's consideration. In the absence of detailed instructions, the Law Draftsman cannot complete the drafting process.

Present position

7. The drafting process is near completion in respect of the Notaries Public Practice Rules, the Practising Certificates (Notaries Public) Rules, the Practising Certificates (Notaries Public)(Grounds for Refusal) Rules and the Notaries Public Disciplinary Tribunal Proceedings Rules. Proposals in relation

to the Notaries Public (Professional Indemnity) Rules and the Notaries Public Examination Rules were received by the Administration on 1 June 2000.

8. Substantially revised drafting proposals in respect of the Appointment and Registration Rules were sent to the Administration on 1 March 2000. A list of outstanding issues for comments was forwarded to the Council of the Society on 11 April 2000. The outstanding issues include the conditions to be satisfied for taking examinations, the rules relating to the manner of appointment of a notary public, and clarification of the areas of responsibility of the Council of the Society and the Chief Justice in respect of the rules to be made under the Ordinance. The Administration received the Council of the Society's further substantive drafting proposals and clarification on the outstanding issues on 1 June 2000.

Likely timing for finalizing the rules

9. It is difficult to estimate at this stage the likely time to finalize the Rules when some of the proposals and clarification on the outstanding issues have just been received. However, the Administration and the Law Draftsman will endeavour to produce draft Rules as soon as possible.

Legal Policy Division
Department of Justice
June 2000