
38. Notaries Public (Practice) Rules

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Schedule

1. Commencement

These Rules come into operation on the 91st day after the day appointed for the commencement of the Legal Practitioners (Amendment) Ordinance 1998 (27 of 1998) (except sections 1 and 7 of that Ordinance).

2. Interpretation

In these Rules, unless the context otherwise requires -

“firm” (律師行或公證人行) means -

- (a) any firm of solicitors in which a notary public practises; or
- (b) any firm of notaries public; or
- (c) any notary public who practises as a sole practitioner under a firm name;

“principal” (主管), in relation to a firm, means a notary public -

- (a) who is a partner of the firm or is the sole practitioner practising under the firm name; or
- (b) who holds himself out as being such a sole practitioner or partner.

3. General conduct of notary public

A notary public must not, in the course of practising as a notary public, do or permit to be done on his behalf anything which compromises or impairs or is likely to compromise or impair any of the following -

- (a) his independence or integrity;
- (b) the freedom of a person to instruct a notary public of the person's choice;
- (c) his duty to act in the best interests of his client;
- (d) his own reputation or the reputation of the profession;
- (e) a proper standard of work;
- (f) his duty of care to persons in any jurisdiction who may place legitimate reliance on a statement of fact contained in his notarial work.

4. Practice promotion

(1) In this section, “practice promotion” (執業推廣) means the advertising or marketing, by whatever means, of -

- (a) a notary public's capacity as a notary public;
- (b) a notary public's practice as a notary public; or
- (c) notarial work of any kind offered or carried out by a firm.

(2) Without limiting the generality of subsection (1), means of advertising or marketing include -

- (a) exposure, with or without consideration, in any public media;

- (b) the issue of any publication to, or the making of any written communication with, a client, a potential client or members of the public that has the character of an advertisement or promotional material;
 - (c) the making of any oral communication with, a client, a potential client or members of the public that has the character of an advertisement;
 - (d) public appearance; and
 - (e) contact with a potential client initiated by or on behalf of a notary public or firm.
- (3) Subject to this section, a notary public or firm may engage in practice promotion or permit practice promotion to be engaged on his or its behalf.
 - (4) It is the duty of every notary public who engages in practice promotion or permits practice promotion to be engaged on his behalf to ensure that the practice promotion complies with the Schedule.
 - (5) In the case of a firm that engages in practice promotion or permits practice promotion to be engaged on its behalf, it is the duty of every principal of the firm who practises as a notary public to ensure that the practice promotion complies with the Schedule.
 - (6) If a notary public or principal of a firm who practises as a notary public becomes aware that any practice promotion being engaged in by the notary public or firm, or on behalf of the notary public or firm, fails to comply with the Schedule, the notary public or principal must as soon as reasonably practicable use his best endeavours to rectify the failure or withdraw the practice promotion.
 - (7) In the absence of evidence to the contrary, proof that any practice promotion being engaged in is being engaged in purportedly on behalf of a notary public or firm is to be regarded as proof that the practice promotion is being engaged in on behalf of and with the consent of that notary public or firm.
 - (8) A notary public or firm that issues any publication or makes any written communication referred to in subsection (2)(b) must retain a copy of the publication or communication for not less than one year from the date it is issued or made.

5. Notary public be identified in letters issued by him

- (1) A notary public must ensure that there is stated in every letter issued in connection with any notarial work carried out by him -
 - (a) his name; and
 - (b) the fact that he carries out the work in his capacity as a notary public.
- (2) For the purpose of subsection (1), "letter" (信件) includes any communication in writing sent by any means from a notary public to another person.

6. Profit sharing with persons who are not notaries public or solicitors is prohibited

- (1) A notary public must not share or agree to share any profit costs arising from his practice as a notary public with any person, whether by paying or agreeing to pay a commission to the person for a client or business that the person introduces or otherwise.
- (2) Subsection (1) does not prohibit the sharing of profit costs among notaries public and solicitors who practise in the same firm in Hong Kong.
- (3) Subsection (1) also does not prohibit a notary public who is a principal of a firm from paying or agreeing to pay an annuity or other sum of money to the following persons -

- (a) a retired principal of the firm;
- (b) a predecessor in business of the firm;
- (c) the dependants or legal personal representative of a deceased principal of the firm or a deceased predecessor in business of the firm.

7. Firms to notify particulars to the Society of Notaries

- (1) Within the time specified in subsection (2), a firm must give written notice of the following particulars to the Society of Notaries -
 - (a) the name of the firm;
 - (b) the name of every principal of the firm;
 - (c) the name of every person in the firm who practises as a notary public;
 - (d) the address of every office of the firm in Hong Kong and the telephone, facsimile, telex and DX numbers and electronic mail address of such office, if available.
- (2) For the purpose of subsection (1) -
 - (a) in the case of a firm that commenced business before the commencement of these Rules, the time specified is 14 days after the commencement of these Rules; and
 - (b) in the case of a firm that commences business on or after the commencement of these Rules, the time specified is 14 days after the firm commences business.
- (3) If there is any change in a particular given under subsection (1), the firm must, within 14 days after the change, give written notice of it to the Society of Notaries.
- (4) It is the duty of every principal of a firm who practises as a notary public to ensure that the firm complies with this section. If the firm does not have such a principal, then every person in the firm who practises as a notary public has that duty.

8. Notaries public practising in their own names to notify particulars to the Society of Notaries

- (1) A notary public, other than a notary public whose name has been given to the Society of Notaries under section 7, must, within the time specified in subsection (2), give written notice of the following particulars to the Society of Notaries -
 - (a) the address of his principal place of business in Hong Kong, and the telephone, facsimile, telex and DX numbers and electronic mail address of such place, if available;
 - (b) if the notary public is a member, director or employee of a solicitor corporation, the name of every member or director of such corporation.
- (2) For the purpose of subsection (1) -
 - (a) in the case of a notary public who commenced practice before the commencement of these Rules, the time specified is 14 days after the commencement of these Rules; and
 - (b) in the case of a notary public who commences practice on or after the commencement of these Rules, the time specified is 14 days after he commences practice.

- (3) If the notary public ceases practice, or there is any change in a particular given under subsection (1), the notary public must, within 14 days after the cessation or change, give written notice of it to the Society of Notaries.

9. Inspection of documents by Council of the Society of Notaries

- (1) For the purpose of ascertaining whether a notary public has complied with these Rules, the Council of the Society of Notaries may by written notice request the notary public to produce to a person appointed by the Council any books, records or other documents of the notary public that relate to the notary public's practice as such, including his books of account, vouchers and other financial records.
- (2) The Council of the Society of Notaries may make a request under subsection (1) either on its own initiative or as a result of a complaint being made to it. The notary public in question must comply with such request within the time and in the manner specified in the notice.
- (3) The person appointed by the Council of the Society of Notaries may inspect or make copies of or take any abstract of or extract from any books, records or other documents produced under subsection (1). As soon as reasonably practicable after completing the inspection, the person must provide the Council with a written report of the inspection, which report may form the basis of any subsequent inquiry into the conduct of the notary public.
- (4) Before making a request under subsection (1) pursuant to a complaint, the Council of the Society of Notaries must satisfy itself that on the face of the evidence, the complaint is justified. The Council may also require the complainant to deposit with it an amount to cover the costs and expenses of the inspection and the costs of the notary public against whom the complaint is made. The Council may deal with the amount so paid in such manner as it thinks fit.
- (5) If the Council of the Society of Notaries is of the opinion that the whole or any part of the costs and expenses of an inspection conducted under this section should be borne by a particular person, it may by written notice direct that person to pay a specified amount within the specified time and in the specified manner.
- (6) The amount specified in a direction made under subsection (5) is recoverable as a civil debt due to the Council of the Society of Notaries.

10. Register of records of notarial works

- (1) A notary public must establish and maintain a register of all the notarial works carried out by him.
- (2) The register must contain, in respect of each item of notarial work, the following particulars -
 - (a) the date on which the work is carried out;
 - (b) the name of the client;
 - (c) a brief description of the work involved;
 - (d) the nature of the document involved.
- (3) Any particular entered in the register in accordance with subsection (2) must be retained in the register for not less than 6 years after it is recorded.

11. Power to waive or modify requirements imposed by these Rules

- (1) The Council of the Society of Notaries may, on its own initiative or on application in writing made by a notary public, waive or modify a requirement imposed by these Rules in its application to the notary public.
- (2) A waiver or modification may be unconditional or subject to conditions.
- (3) The Council of the Society of Notaries must give written notice of its decision on an application to the applicant.

SCHEDULE

[s. 4]

1. General principles

Practice promotion must be truthful, must not contain any indecent material and must be carried out lawfully.

2. Promotional acts that are not permissible

Except as provided in section 3, practice promotion must not -

- (a) contain information that is false, misleading or deceptive as to a material fact, or is false, misleading or deceptive through omission of a material fact;
- (b) contain any express or implied remarks or comments that are adverse to any other notary public or firm, whether by way of a comparison of services, practice or fees or otherwise;
- (c) expressly or impliedly represent that a notary public or firm has expertise in carrying out notarial work in general or a particular area of notarial work;
- (d) contain, without the prior written consent of a client, a description sufficient to enable the client or a particular item of the client's business to be identified;
- (e) be defamatory;
- (f) expressly or impliedly represent that a notary public or firm can achieve an objective of a client by improper means;
- (g) be intrusive, offensive or otherwise inappropriate having regard, among other matters, to all or any of the following matters -
 - (i) the manner in which the practice promotion is carried out;
 - (ii) the media through which the practice promotion is carried out;
 - (iii) the frequency at which the practice promotion is carried out;
 - (iv) the surrounding circumstances;
- (h) be calculated to cause, or carried out in such manner as to likely to cause, injury, discomfort, annoyance or inconvenience to any recipient or intended recipient;
- (i) be directed to a person who has indicated that he does not wish to be contacted;
- (j) be prejudicial to the interest of the public;
- (k) contain anything that may bring the profession of notaries public into disrepute.

3. References to knowledge, etc. are permissible if justified

Practice promotion may refer to the knowledge, qualifications, experience or areas of practice of a notary public or firm if the making of such reference is justified in the circumstances.