

NOTARIES PUBLIC (PRACTICE) RULES

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NOTARIES PUBLIC (PRACTICE) RULES

(Made by the Council of Management of The Hong Kong Society of Notaries under section 73D of the Legal Practitioners Ordinance (Cap. 159) subject to the prior approval of the Chief Justice)

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).

2. Interpretation

In these Rules, unless the context otherwise requires -

“firm” (律師行或公証人行) 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. Notary public must not publicise his practice

A notary public must not publicise or otherwise promote his practice as a notary public or permit such practice to be publicised or otherwise promoted.

5. Letterheads

(1) A notary public who is a principal of a firm must ensure that there is stated on the letterhead of every letter issued in connection with any notarial work carried out by the firm -

- (a) the name of every principal of the firm who practises as a notary public and is ordinarily resident in Hong Kong; and
- (b) a description of such principal as a notary public.

(2) A notary public who practises as a notary public in his own name must ensure that his name appears on the letterhead of every letter issued in connection with his notarial work.

(3) This section applies whether the letter is delivered by hand, by post, by facsimile or by any mode of electronic transmission.

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) However, 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 of notaries public to notify particulars to the Society

(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, fax, telex and DX numbers and email 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

(1) A notary public, other than a notary public whose name has been provided to the Society of Notaries under section 7, must, within the time specified in subsection (2), give written notice to the Society of Notaries of the address of his principal place of business in Hong Kong, and the telephone, fax and DX numbers and email address of such place, if available.

(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 must comply with the 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 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 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.

Approved this day of 2002.

Chief Justice

Made this day of 2002.

Explanatory Note

These Rules make provisions respecting the professional practice and conduct of notaries public. In particular -

- (a) section 3 sets out the general standard of conduct for notaries public;
- (b) section 4 prohibits notaries public from publicising their practice;
- (c) section 5 specifies the requirements for letterheads issued in connection with notarial work;
- (d) section 6 restricts profit sharing with persons who are not notaries public or solicitors;

- (e) sections 7 and 8 provide for the supply of specified particulars to The Hong Kong Society of Notaries; and
- (f) section 10 requires every notary public to establish and maintain a register of all notarial works done by him.