

**NOTARIES ACT**

Act 7 of 2008 – 24 November 2008

ARRANGEMENT OF SECTIONS

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	SCHEDULE

## NOTARIES ACT

### PART I – PRELIMINARY

#### 1. Short title

This Act may be cited as the Notaries Act.

#### 2. Interpretation

In this Act—

“Association” means the Association of Notaries established under section 23;

“auditor” means a licensed auditor under the Financial Reporting Act;

“*brevet*” means an original deed which the notary is not bound to keep in his possession;

“certified copy” means a copy or photocopy of a notarial deed certified as such by a notary;

“Chairperson” means the person elected as such under section 26;

“Chamber” means the Chamber of Notaries constituted in accordance with section 25;

“Code” means the Code of Ethics referred to in section 35;

“digital signature” has the same meaning as in the Electronic Transactions Act;

“document” includes an electronic document or a scanned version of a document;

“electronic” has the same meaning as in the Electronic Transaction Act;

“notarial deed” means an authentic document drawn up by a notary in the exercise of his profession and vested with enforceable character (*force exécutoire*);

“notary” means an *officier ministériel* who—

- (a) is authorised by the Prime Minister, after consultation with the Attorney-General, to apply for admission to practise;
- (b) is, subject to section 11, admitted to practise for life by the Chief Justice pursuant to the Law Practitioners Act; and
- (c) may perform the duties specified in this Act and act as counsellor;

“office” means the place where a notary exercises his profession;

“original” means—

- (a) notwithstanding any other enactment, the original of a notarial deed other than a *brevet*;
- (b) an authentic deed drawn up by a notary in the exercise of his profession and vested with enforceable character (*force exécutoire*);

“Rapporteur” means the person appointed as such under section 26;

“register” means the register kept pursuant to section 26;

“Repertory” means the up to date summary of all the notarial deeds, including those in electronic form, drawn up by a notary;

“Roll” has the same meaning as in the Law Practitioners Act;

“rules” means rules made by the Chamber under section 39;

“Secretary” means the person elected as such under section 26;

“Syndic” means the person elected as such under section 26;

“summary” means the document containing the particulars of notarial deeds drawn up by, or deposited with, a notary and referred to in section 10;

“transaction” means an *acte juridique* which creates, declares the existence of, transfers or extinguishes a right or obligation;

“Treasurer” means the person elected as such under section 26.

[S. 2 amended by s. 18 (a) of Act 26 of 2013 w.e.f. 19 May 2014; 2 July 2015; s. 40 (a) of Act 9 of 2015 w.e.f. 2 July 2015.]

## PART II – EXERCISE OF PROFESSION

### 3. Profession of notary

(1) Subject to section 40 (c), the number of notaries on the Roll shall not exceed 100.

(2) Notwithstanding any other enactment, a notary shall be authorised to—

- (a) draw up any deed which the parties are required by law, or on their own initiative, to invest with the character of authenticity attaching to the documents of a public authority;
- (b) establish the date on which a deed is drawn up by him;
- (c) keep any notarial deed drawn up by him or deposited with him in his custody; and
- (d) deliver a certified copy of a deed drawn up by him.

(3) A notary shall keep in his custody—

- (a) every original, including an original in electronic form, drawn up by him or deposited with him; and
- (b) a certified copy of every *brevet* drawn up by him.

(4) A notary shall—

- (a) exercise his profession with impartiality and independence;
- (b) at all times, show loyalty and integrity towards the State, his clients and other law practitioners; and

- (c) be bound by professional secrecy and shall not divulge any of his clients' affairs except with their consent or where ordered to do so by a Court.

[S. 3 amended by s. 40 (b) of Act 9 of 2015 w.e.f. 2 July 2015.]

#### 4. Office of notary

(1) Every notary shall have an office, but he may cause a notarial deed to be signed in any place other than that office.

(2) The office of a notary shall be situated—

- (a) in the island of Mauritius, in the District of Port Louis; or
- (b) in Rodrigues, in Port Mathurin.

(3) Every notary shall keep the documents referred to in section 3 (3) in such secure premises as the Chief Archivist may approve.

(4) Every notary shall give written notice to the Attorney-General and to the Chamber of the location of his office and of any other premises where the documents referred to in section 3 (3) are kept, and of any change in the location of either premises.

#### 5. Notary's seal

(1) Every notary shall keep a stamp or private seal bearing his name, surname, profession and the address of his office.

(2) Every *brevet* or certified copy issued by a notary shall bear the imprint of the notary's stamp or seal.

#### 6. Relationship by blood or marriage

(1) No notary shall draw up a notarial deed to which any person who is related to him is a party or in which any such person is a beneficiary.

(2) No notary shall act in a notarial deed together with another notary who is related to him.

(3) No person shall be a witness to a notarial deed where he is related to, or in the employment of, the notary who draws up the deed or a party to the deed.

(4) Where a notarial deed is drawn up in contravention of this section, it shall only have the effect of a document under private signature.

(5) For the purpose of this section, a person is related to another person where he is, by blood or marriage, a spouse, an ascendant, a descendant, a brother or a sister or an in-law to the same degree.

#### 7. Prohibited acts

(1) Subject to section 34, no notary shall, in the exercise of his profession, directly or indirectly or through another person—

- (a) acquire any interest in a matter in respect of which he provides his services;

- (b) invest any money received by him in his capacity of notary, whether or not interest is payable by him;
- (c) receive or keep any money on which he agrees to pay interest;
- (d) make use of any money or security entrusted to him for a purpose other than that for which it was entrusted; or
- (e) cause or permit any notarial deed, note or receipt to be signed in blank.

(2) No notary shall, as drawer or endorser, sign a bill of exchange other than a cheque, promissory note or bond payable to order or bearer, or guarantee the payment of any such instrument.

(3) Nothing in this section shall prevent a notary from borrowing any money for his personal needs on the security of his property or otherwise.

### **8. Unauthorised dealings**

No notary shall—

- (a) enter into any form of partnership or fee sharing arrangement in relation to the exercise of his profession with a person who is not a notary;
- (b) act as agent in any matter which can only be done by a notary for a person who is not a notary; or
- (c) permit his name to be made use of in any matter on account or for the profit of a person who is not a notary.

### **9. Registration of notarial deeds**

(1) (a) Subject to the Inscription of Privileges and Mortgages Act, the Land (Duties and Taxes) Act, the Registration Duty Act and the Transcription and Mortgage Act, every notary shall be responsible for the payment of registration dues, land transfer tax, fees and charges on any notarial deed drawn up by him.

(aa) Every notary shall submit to the Registrar-General, for registration, transcription or inscription, the notarial deed, and, where applicable, the appropriate form set out in the Sixth Schedule to the Transcription and Mortgage Act, duly filled in.

(b) Payment to the Registrar-General of registration dues, land transfer tax, fees and charges referred to in paragraph (a) shall be effected electronically or in such other manner as the Registrar-General may determine.

(c) For the purposes of taxing, scanning and registration, the submission of a notarial deed to the Registrar-General may be made in one original.

(d) The submission referred to in paragraph (c) may be made by scanning the original deed and submitting the scanned copy thereof, which is taken to be the original deed for the purposes of taxing and registration.

(e) For the purpose of paragraph (b), an online submission of a notarial deed, which is taken to be the original deed, may be made to the Registrar-General.

(f) Every notarial deed presented to the Registrar-General under section 34 (2) of the Registration Duty Act, shall, until it is handed back to the notary, be under the sole custody of the Registrar-General who shall cause an acknowledgement receipt to be issued to the notary to the effect that the Registrar-General has custody of the deed.

(2) (a) Subject to paragraph (b), every notary shall cause a notarial deed drawn up by him, together with, in the case of a mortgage deed, the relevant memorandum of inscription, to be registered with the Registrar-General within 8 days from the date of the deed.

(b) Every notary shall cause a will drawn up by, or deposited with, him to be registered with the Registrar-General within 3 months of—

(i) the death of the testator; or

(ii) the date on which he subsequently becomes aware of the death.

(c) (i) The Registrar-General shall, from the information made available to him pursuant to this section and the Registration Duty Act, make up and keep a Register of Testamentary Dispositions, in such manner as he may determine, which may, on written application to that effect, be consulted by a notary or an attorney.

(ii) A notary or an attorney may also request the Registrar-General to provide him with a certificate relating to an entry contained in Register referred to in subsection 3 (c).

(3) (a) Subject to paragraph (b), no notary shall deliver an original or a certified copy of a notarial deed drawn up by him, or do any act pursuant to the deed, unless the deed is registered with the Registrar-General.

(aa) The notary shall deliver, to the party to the deed, a certified copy or an authenticated copy of the deed "*expédition*", within 8 days from the date of the registration of the deed with the Registrar-General.

(b) A notary may deliver a certified copy of an authentic will to the testator before it is registered with the Registrar-General.

(4) No notary shall, unless the document is registered with the Registrar-General—

(a) draw up a notarial deed based on a document under private signature or a notarial deed drawn up in a foreign State; or

(b) include any such document among the notarial deeds drawn up by him or receive it on deposit.

(5) No notary shall receive a deed or other document without having drawn up a notarial deed certifying that the deposit is being made and causing it to be registered with the Registrar-General.

[S. 9 amended by s. 17 of Act 20 of 2009 w.e.f. 19 December 2009; by s. 3 of Act No. 16 of 2009 w.e.f. 7 December 2009; by s. 17 of Act 20 of 2009 w.e.f. 19 December 2009; s. 18 (b) of Act 26 of 2013 w.e.f. 19 May 2014; 2 July 2015; s. 22 (a) of Act 4 of 2017 w.e.f. 20 May 2017.]

## 10. Repertory and Register of Wills

(1) (a) Every notary shall keep a Repertory which shall be an up to date summary of all the notarial deeds drawn up by him in numerical order, without any blank space or interlineation.

(b) Every item of the Repertory shall indicate—

- (i) the number, date and nature of the deed;
- (ii) the names, surnames and addresses of the parties;
- (iii) that the deed is in *Minute* or in *brevet* and is registered;
- (iv) in the case of a deed relating to the ownership or usufruct of property, a description of the property, its location and price or value; and
- (v) in the case of a deed relating to a loan, cession or transfer of money, the amount involved.

(2) Every notary shall keep a Register of Wills in which he shall indicate, in relation to any holographic will deposited with him, the date of deposit and the names, surname, occupation, address, date and place of birth of the person effecting the deposit, but not the contents of the will.

(3) Every notary shall—

- (a) where required to do so by the Attorney-General, the Chamber or a Court, forthwith produce his Repertory for inspection to the person named in the request; and
- (b) in each quarter, not later than 25 January, 25 April, 25 July and 25 October—
  - (i) deposit a copy of the Repertory for the preceding 3 months with the Chief Archivist; and
  - (ii) pay to the Chief Archivist a fee of 5 rupees or such other fee as may be prescribed for every deed included in the Repertory, and collect a receipt to that effect.

(4) (a) Every notary shall, not later than 31 March in every year, transmit to the Chief Archivist for safe keeping every original drawn up by, or deposited with, him during the year which precedes by 40 years the year during which the transmission is made, together with a list of the deeds, and the Chief Archivist shall issue a receipt to that effect.

(b) Where an original required to be transmitted pursuant to paragraph (a) is untraceable or in bad condition, and a duplicate of the deed in good condition is available, the Chief Archivist shall replace the original by the duplicate.

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(c) Where neither the original nor a duplicate of the deed is available for the purposes of this subsection, the notary shall, where this is possible, transmit to the Chief Archivist a certified copy of the deed.

(5) Where a notary or a person who was a party to a notarial deed or is the latter's heir or personal representative wishes to have a photocopy of a deed transmitted pursuant to subsection (4), he shall make a written application to that effect to the Chief Archivist who shall, on payment of the expenses to be incurred, supply the required photocopy.

(6) (a) The Chief Archivist, or any public officer deputed by him, may, at all reasonable times, inspect the Office of a notary to ensure that section 4 (3) and this section have been complied with.

(b) Subject to paragraph (c), no original deed in the possession of a notary or held on deposit by the Chief Archivist may be given up except where—

- (i) the law so requires or a Court so orders; and
- (ii) a photograph or photocopy of the deed has been made and certified by a Judge and been substituted for the original.

(c) For the purposes of paragraph (b), no photograph or photocopy of a will or donation *mortis causa* shall be made while the testator or donator is still alive.

#### **11. Vacancy and transmission of office**

(1) The office of a notary shall become vacant when he dies or gives notice of retirement to the Chamber, or his name is removed from the Roll.

(2) Where the office of a notary becomes vacant, the Chamber shall forthwith apply to a Judge in Chambers for an order appointing a notary to take temporary charge of the notarial deeds and Repertories which were in the former notary's possession for such period as the Judge may order.

(3) Where a notary has retired or died, he or his heirs may, with the written concurrence of the Chamber, enter into an agreement with another notary to take charge permanently of the notarial deeds and Repertories which were in the former notary's possession, not later than 6 months after the date on which the office became vacant.

(4) Where a notary's name is removed from the Roll or where no agreement has been reached under subsection (3), the Attorney-General shall, not later than 9 months after the vacancy occurred, designate another notary, on the recommendation of the Chamber, to take charge permanently of the notarial deeds and Repertories which were in the former notary's possession.

(5) The office of a notary may be ceded on payment by the beneficiary of an amount which shall be determined by the Chamber, having regard to the clients, the realised investments of the office to be ceded and the right to a lease, if any.

(6) (a) The Syndic shall be responsible for ensuring that the handing over of any notarial deeds or Repertories pursuant to this section is properly effected.

(b) The Syndic may, for the purposes of paragraph (a), require the assistance of an usher or a police officer.

(c) A person who obstructs the Syndic or any usher or police officer in relation to the handing over of any deed or Repertory shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 2 years.

### **PART III – NOTARIAL DEEDS AND CERTIFIED COPIES**

#### **12. Contents of notarial deeds**

(1) Every notarial deed shall be drawn up in the English or French language.

(2) Every notarial deed shall specify—

- (a) the names and surname, and the address of the office of the notary;
- (b) the place at which and the date on which the deed is drawn up and signed;
- (c) in respect of every party—
  - (i) his first name or first names, in small letters, followed by his surname in capital letters, his National Identity Card Number, where available, in format XXXXXXXXXXXXXXXX (14 characters) and, where applicable, a scanned image of a recent passport-size photograph of him, printed in the deed;
  - (ii) his occupation and the postal address of his residence;
  - (iii) in the case of a citizen of Mauritius, his date of birth in format DD/MM/YYYY, with a reference to the registered number of his birth certificate in format Birth Certificate No./Year of Registration of Birth and the Civil Status Office where the birth was registered;
  - (iv) where applicable, his date of marriage in format DD/MM/YYYY, with a reference to the registered number of the marriage certificate in format Marriage Certificate No./Year of Marriage, the Civil Status Office where the marriage was registered and the matrimonial regime applicable to him at the time of the transfer;
  - (v) in the case of a non-citizen as defined in the Non-Citizens (Property Restriction) Act, in addition to the particulars referred to in subparagraphs (iii) and (iv), his country of birth and country of his marriage;

- (vi) where applicable, his business registration number under the Business Registration Act in format XXXXXXXXXX (9 characters); and
  - (vii) in the case of a partnership, company or body corporate, its trade name or corporate name and its principal place of business and in respect of their representatives, their first name or first names in small letters followed by their surname in capital letters and their National Identity Card Number, where available, in format XXXXXXXXXXXXXXXX (14 characters);
- (ca) in respect of the immovable property—
- (i) the address of the property, the Parcel Identification Number (PIN) where available, together with a site plan showing the precise location;
  - (ii) the area of land in format Xm<sup>2</sup> up to 2 decimal places and the nature and description of the building, if any, on it, and where undivided rights are transferred, the fraction of the property sold;
  - (iii) the price paid in format Rs X or other appropriate currency on the last transfer of the property and the title of ownership in format TV XXXX/XXX; and
  - (iv) the consideration and real value of the property in format Rs X or other appropriate currency;
- (d) the subject-matter of every transaction embodied in the deed.

(3) Where a notary cannot certify the identity of a party or witness to a notarial deed, the party or witness shall—

- (a) exhibit to the notary a valid passport or other official document establishing his identity to the satisfaction of the notary; and
- (b) produce a recent passport-size photograph of himself, of which the notary shall print in the deed a scanned image.

(4) No person shall be a witness to a notarial deed—

- (a) where he is a party to the deed; and
- (b) unless he—
  - (i) is of age;
  - (ii) is ordinarily resident in Mauritius;
  - (iii) can sign his name; and
  - (iv) is, subject to subsection (3), personally known to the notary.

[S. 12 amended by s. 23 (a) of Act 20 of 2011 w.e.f. 11 November 2011.]

### **13. Drawing up of notarial deeds or certified copies**

(1) Every notarial deed or certified copy shall—

- (a) be drawn up so as to constitute a single document;

- (b) contain no abbreviation, blank, gap or interval except those that are currently used in notarial practice;
- (c) be legibly written, printed or typewritten in indelible ink; and
- (d) repeat in words the amount of any sum indicated by means of figures.

(2) Where the amounts in figures and in words differ, the amount in words shall prevail, unless the context otherwise requires.

(3) Every page of a notarial deed or certified copy shall bear a number and the number of pages shall be indicated at the end of the deed.

(4) No word or figure in a notarial deed or certified copy shall be written over another word or figure and no interline or other addition shall be made in the body of the deed or certified copy.

(5) Where a word or figure in a notarial deed or certified copy has to be deleted, it shall be deleted in such manner as to remain legible and allow the number of words or figures deleted to be recorded as a marginal note to the page on which the deletion has been made or at the end of the deed or certified copy.

(6) Any addition to a notarial deed or certified copy shall be recorded at the end of the deed or certified copy, and before the signature of the parties and the notary.

(7) —

(8) (a) The typeface shall be “Cambria” in regular style and shall have font size of 12 point, printed on A4 size paper of not less than 90 grams.

(b) Every page of a notarial deed or certified copy thereof shall be consecutively numbered on the bottom-right, page 1 of the total number of pages, page 2 of the total number of pages and so on and so forth and any annex thereto shall be numbered on the bottom-right, page 1 of the total number of pages, page 2 of the total number of pages and so on and so forth.

(c) Any date mentioned in the notarial deed or certified copy shall be in format DD/MM/YYYY.

(d) The notarial deed or certified copy shall not contain any abbreviation, interlineation, superscription and any word erased or scratched out has to remain legible.

(e) On the recto of every sheet, there shall be a blank margin of 3 centimetres on the left and one centimetre on the top, right and bottom except that on the first and last sheets, the top margin shall be 10 centimetres.

(f) On the verso of every sheet, there shall be a blank margin of 3 centimetres on the right and one centimetre on the top, left and bottom.

(g) The marginal entry shall be made at the end of the content of the original notarial deed or certified copy.

(h) All annexes shall be placed at the end of the original notarial deed and be numbered consecutively on the bottom right, page 1 of the total number of pages, page 2 of the total number of pages and so on and so forth.

(i) Where a notarial deed or certified copy thereof contains marginal corrections which may be handwritten and words erased or scratched out, it shall contain a statement to which the person filling the original shall affix his signature or his initials, setting out the number of marginal corrections made and the number of words erased or scratched out.

[S. 13 amended by s. 23 (b) of Act 20 of 2011 w.e.f. 11 November 2011; s. 21 of Act 38 of 2011 w.e.f. 15 December 2011.]

#### 14. Subscribing notarial deeds

(1) Before a party or witness is required to subscribe a notarial deed, the notary shall—

- (a) ascertain that no witness to the deed is disqualified under this Act;
- (b) read out the deed to the party, in the presence of the witnesses, if any;
- (c) ascertain whether the party and the witnesses, if any, sufficiently understand the language in which the deed is drawn up to understand its contents;
- (d) where a party or a witness does not understand the language or the contents of the deed, explain its contents to that person in a language which he understands or, if he is unable to do so, make use of the assistance of an interpreter who will explain the contents of the deed and sign it;
- (e) cause the party and the witnesses, if any—
  - (i) to sign the deed and any marginal note made under section 13;
  - (ii) to initial the foot of the recto of every page and every addition made under section 13;
- (f) record at the end of the deed the fact that paragraphs (a) to (e) have been complied with;
- (g) sign—
  - (i) the deed; and
  - (ii) any addition made under section 13; and
- (h) initial the foot of the recto of every page and every marginal note made under section 13.

(2) Where a party to a notarial deed is unable to sign the deed by reason of illiteracy or physical incapacity—

- (a) the party shall affix his fingerprint to the deed; or

- (b) there shall be 2 witnesses or, as the case may be, 2 further witnesses to the deed; and
- (c) the notary shall—
  - (i) record the fact of, and the reason for, the inability of the party to sign;
  - (ii) record of which particular finger a print is affixed; and
  - (iii) certify that the party affixed the print to the deed in his presence and in that of the witnesses referred to in paragraph (b).

(2A) Every initial or signature required under this section may be made by way of digital signature.

(3) Where a notary fails to comply with any provision of subsection (1) or (2), this shall render the deed voidable.

[S. 14 amended by s. 18 (c) of Act 26 of 2013 w.e.f. 2 July 2015.]

### **15. Agents and proxies**

Where a party to a notarial deed is represented by an agent and a proxy, the notary shall—

- (a) before subscribing the deed, personally verify that the power of attorney empowers the agent and proxy to represent his principal in respect of the transaction witnessed by the deed;
- (b) where the power of attorney is in the form of a *brevet*, cause a deed of deposit to be drawn up, to which the *brevet* is annexed, and have them registered; and
- (c) record in the deed that he has complied with paragraphs (a) and (b).

### **16. Notarial deeds to be drawn up before witnesses**

Every notarial deed containing a donation *inter vivos* or a donation between husband and wife during their marriage, a revocation of a donation or a will, an acknowledgment of natural children, or a power of attorney to make such donation, revocation or acknowledgment shall be, under pain of nullity of the deed, read to and signed by the parties, in presence of 2

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notaries or one notary and 2 witnesses able to sign their names and residing in Mauritius.

**17. Delivery of certified copies**

(1) Subject to subsection (2), the right of delivering a certified copy of a notarial deed shall belong to the notary who holds the original or to a notary designated by him.

(2) A notary may deliver a copy of a notarial deed the original of which has been deposited with him.

**18. Delivery of notarial deeds or certified copies**

(1) A notary shall not deliver to any person, except in the cases provided by law or in virtue of the judgment of a Court, an original deed, whether in his possession or held on deposit by the Chief Archivist.

(2) A notary shall not, except on the order of a Judge, deliver a certified copy of a notarial deed, nor give information as to the deed, to any person other than a person directly interested, his heirs or beneficiaries.

(3) In the case of a compulsory order by a Court, a written memorandum shall be drawn up by the notary with whom the deed has been deposited and a certified copy of the deed shall be placed in his records.

**19. Notarial deeds to be received in evidence**

(1) Subject to subsection (2), every notarial deed shall be received in evidence in any Court without being formally proved, and may be acted upon.

(2) Where criminal proceedings are started in a Court alleging that a notarial deed is forged, no action shall be taken on the deed until such time as the allegation of forgery has been disposed of or as the Court may direct.

**20. Transfer of immovable property**

(1) (a) Where a notary draws up a notarial deed containing provision for the transfer of immovable property, the notary shall make known to the parties to the deed the consequences to which they expose themselves if the full purchase price or consideration or conditions giving rise to duty, are not truly expressed and specified in the deed, and a clause shall be inserted in the deed stating that the notary has made this requirement of the law known to the parties.

(b) Where the deed does not contain such a clause, the Registrar-General shall refuse to register it, until such a clause is added.

(2) (a) A clause shall be inserted in every such deed of sale to the effect that the parties declare to the best of their knowledge and belief that the real price or consideration represents the actual price and real value of the property sold, or that such actual price and real value for the purpose of registration is estimated at a certain sum.

(b) A declaration under paragraph (a) may be made by any of the parties to the deed, by their agents or representatives, or by any other interested party.

(c) The Registrar-General shall not register a deed of sale unless it contains such a clause or such a clause is added.

#### **21. Discharge in notarial deeds**

(1) Every notary who draws up a notarial deed of acquittance of any privileged or mortgaged claim inscribed in the books of the Conservator of Mortgages shall insert in the deed a clause giving, to the extent of the amount paid, a discharge of the inscribed privilege or mortgage indicating the date, the volume and the number of such inscribed privilege or mortgage.

(2) Every notary before whom a notarial deed is executed containing a clause giving a discharge of any inscribed privilege or mortgage shall, within 8 days from the date of registration, cause a certified copy of the deed of erasure to be deposited with the Conservator of Mortgages, in conformity with the terms of the discharge.

[S. 21 amended by s. 4 of Act No. 16 of 2009 w.e.f. 7 December 2009; s. 22 (b) of Act 4 of 2017 w.e.f. 20 May 2017.]

#### **22. Inscription of legal mortgage**

The inscription of a legal mortgage referred to in article 2190 of the Code Civil Mauricien shall be taken by a notary appointed by the Judge in each case.

### **PART IV – ASSOCIATION OF NOTARIES**

#### **23. Association**

(1) There is established for the purposes of this Act an Association of Notaries which shall be a body corporate.

(2) Every notary shall be a member of the Association.

#### **24. Objects of Association**

(1) The objects of the Association shall be to—

- (a) safeguard, maintain and promote the interests of its members;
- (b) uphold the honour, dignity, reputation and independence of its members;
- (c) further the interests of its members in connection with the practice of their profession;
- (d) regulate the profession of a notary and ensure compliance with the Code or the rules of practice of the profession; and
- (e) uphold standards for the education, continued education and professional responsibility of its members.

(2) In pursuance of its objects, the Association may consider all matters generally affecting its members and take such measures as it may determine in relation thereto and, in particular, concerning—

- (a) the encouragement of the study of the law and legal education;
- (b) the promotion and support of law reform;
- (c) the maintenance and observance of professional conduct;

*continued on page N37 – 13*



- (d) the furtherance of good relations between law practitioners in Mauritius and elsewhere;
- (e) the affiliation of the Association to any similar association in any other country and the delegation of representatives of the Association thereto; and
- (f) any action to be taken against a notary for breach of the Code or the rules of practice.

## **25. Chamber**

(1) For the purposes of managing the affairs of the Association in furtherance of its objects and exercising any of the powers conferred on the Association under this Act, there shall be a Chamber of Notaries which shall consist of 5 persons elected at an Annual General Meeting of the Association in accordance with this section.

(2) Three of the members of the Chamber shall be elected from among the most senior notaries in practice who make up half the total number of members of the Association, the other 2 being elected from among the other half.

(3) Every member of the Chamber shall hold office for 2 years.

(4) Three members of the Chamber shall constitute a quorum at a meeting.

(5) A General Meeting of the Association may, on good cause shown and after giving him a hearing, revoke a member of the Chamber and appoint a member to replace him until the expiry of his term of office.

## **26. Office bearers**

(1) (a) Subject to paragraph (b), the Chamber shall, not later than 48 hours after its members have been elected, meet and elect a Chairperson, a Syndic, a Rapporteur, a Secretary and a Treasurer who shall hold office for 2 years.

(b) The Chairperson, Syndic, Rapporteur, Secretary and Treasurer elected under paragraph (a) shall be eligible for re-election.

(c) The Chairperson, the Syndic and the Secretary shall be chosen from among the senior members referred to in section 25 (2).

(2) The Chairperson shall—

- (a) preside every meeting of the Chamber and every General Meeting of the Association; and
- (b) have a second or casting vote at any meeting of the Chamber where the votes are equally divided.

(3) The Syndic shall be responsible for initiating action against a notary for professional misconduct and for ensuring that the handing over of deeds and Repertories pursuant to section 11 is correctly effected.

(4) The Rapporteur shall be responsible for gathering all appropriate information regarding the profession and report to the Chairperson on any matter in respect of which a notary is reasonably suspected of professional misconduct.

(5) The Secretary shall record the decisions of the Chamber and of every General Meeting of the Association and keep the archives and a register in which he shall record—

- (a) the names and surname, professional and home addresses, qualifications and other relevant particulars of every member of the Association; and
- (b) any change in the particulars referred to in paragraph (a).

(6) The Treasurer shall be responsible for keeping the accounts of the Association, for the recovery of all amounts due to the Association and for opening a current or savings account at a bank in the Association's name.

## **27. General Meetings**

(1) The Chamber shall, by giving not less than 7 days' notice, convene an annual general meeting of the members of the Association not later than 4 months after the end of each year for the purpose of—

- (a) receiving the Chairperson's report on the activities of the Association during the preceding year;
- (b) considering and approving the audited accounts of the Association for the preceding year;
- (c) electing the members of the Chamber where necessary; and
- (d) appointing an auditor in accordance with section 30.

(2) The Chamber may, and shall on the request of not less than 20 members of the Association specifying the object of the request, at any time convene a special general meeting of the members of the Association for the purpose of discussing any matter other than those specified in subsection (1).

(3) (a) The quorum for a general meeting shall be half of the number of members of the Association.

(b) If a quorum is not present at the place and time fixed for a general meeting, the meeting shall stand adjourned to 7 days at the same time and place, and one fourth of the number of members of the Association shall constitute a quorum.

[S. 27 amended by s. 5 of Act No. 16 of 2009 w.e.f. 7 December 2009.]

## **28. Removal from register**

(1) The Chamber shall remove from the register the name of a notary—

- (a) who has died;
- (b) who has given written notice that he has retired; or
- (c) where it is ordered to do so by the Supreme Court.

(2) Where the Chamber removes the name of a notary from the register pursuant to subsection (1) (a) or (b), it shall give written notice of that fact to the Master and Registrar.

## **29. Accounts of Association**

(1) The accounts of the Association shall, at all reasonable times, be open to inspection by a member of the Association.

(2) The Treasurer shall, not later than 6 weeks after the end of every year, prepare and submit to the auditor appointed under section 30 a statement of accounts for the preceding year.

**30. Audit**

All accounts and books of the Association shall be audited at least once a year not later than 3 months after the end of the year by an auditor appointed for this purpose at the annual general meeting.

**31. Legal proceedings**

In any proceedings before a Court, the Association shall be represented by the Secretary and service of any process by or against the Association shall be validly served by or on the Secretary.

**32. Execution of documents**

Every document, including any cheque on a current or savings account at a bank in the name of the Association, shall be signed and executed by 2 members of the Chamber, one of whom shall be one of the senior members referred to in section 25 (2).

**33. Donations and legacies**

Article 910 of the Code Civil Mauricien shall not apply to the Association.

**PART V – PROFESSIONAL CONDUCT**

**34. Clients' money**

(1) Every notary shall keep accounts of all his receipts and expenditure, showing clearly and separately any amounts or securities received from or on behalf of his clients or returned or paid out.

(2) The Chamber may, where it has reason to believe that it is necessary to do so, designate an auditor to audit the books of account of any notary at its own expense, and the auditor shall make a written report of his audit to the Chamber and to the Attorney-General.

(3) (a) Subject to paragraph (b), where a notary receives any money entrusted to him by or for a client, he shall, not later than 21 days after he receives the money, deposit it in the client's account.

(b) Subject to paragraph (c), where a notary receives a written request to that effect from his client before the expiry of the period of 21 days, he may, after giving notice of the request to the Chamber, keep any money so entrusted to him for a period not exceeding 6 months.

(c) The notary may, at the client's request, keep any money referred to in paragraph (b) for 2 further successive periods of 6 months.

**35. Code of Ethics**

(1) The Chamber shall lay down a Code of Ethics which shall include rules—

- (a) of practice;

- (b) of professional conduct;
- (c) in relation to the keeping and auditing of accounts.

(2) The Code of Ethics shall be approved by the Association in General Meeting.

(3) Where the Code of Ethics has been approved in accordance with subsection (2), every notary shall comply with it.

[S. 35 repealed and replaced by s. 6 of Act No. 16 of 2009 w.e.f. 7 December 2009.]

### **36. Breach of rules of professional conduct**

(1) The Chamber may investigate any report made to it regarding an alleged breach of this Act, of the Code or of the rules of practice, and may, subject to subsections (2), (3) and (4), determine that the notary shall be reprimanded or severely reprimanded.

(2) The Chamber shall—

- (a) attempt to reach an amicable settlement between the parties concerned by a report under subsection (1); and
- (b) afford the Syndic and the notary who is the subject of such a report an opportunity to be heard.

(3) Where it appears to the Chamber, after such preliminary investigation as it thinks fit, that there is a *prima facie* case of serious professional misconduct by a notary, it shall refer the matter to the Supreme Court for such disciplinary action as it considers appropriate.

(4) (a) The Association may, following a report from the Chamber, determine that a member who has been sanctioned pursuant to subsection (1) shall be suspended from membership for a period not exceeding 3 months during which he shall not be entitled to practise.

(b) The Chamber shall thereupon designate another notary to be the provisional administrator of the notary's Office during that period.

(5) A notary may, within 21 days from the date on which a decision under subsection (1) or (4) is communicated to him, apply to the Supreme Court for a judicial review of the decision.

## **PART VI – NOTARIES' FEES**

### **37. Fees chargeable by a notary**

(1) (a) Subject to this section, the fees for a deed drawn up by a notary or a copy of any such deed or for any other service rendered by a notary shall be those specified in the Schedule.

(b) Nothing in paragraph (a) shall prevent a notary from charging a fee for giving advice or providing any other service not specified in the Schedule to a client.

(2) A notary may, with the consent of the Chamber, claim a fee which is lower than the fee specified in the Schedule.

(3) Where a notary has drawn up a deed and a party to the deed, on account of some change in the conditions or other cause, will not sign the deed, the notary shall be allowed half the fee he would have been entitled to, had it been signed.

(4) Every notary shall give a receipt for any sum which he may have received for any fees, attendance, disbursements or travelling expenses, on which shall be clearly indicated the reason for receiving the amount and the sum received in respect of each item.

(5) (a) Where any dispute arises concerning the fees and expenses of a notary, the matter shall be referred to the Chamber for advice and then to the Master and Registrar who, in the presence of the parties or in their absence after being duly summoned to appear, shall tax the fees and expenses.

(b) Where any of the parties is dissatisfied with the taxation, he may appeal to the Supreme Court in such manner as may be prescribed.

(6) Where on the taxation of any bill of fees, more than half of the amount is disallowed, the notary shall not be allowed the costs of attending the taxation.

(7) A notary may obtain, on application to a Judge, a writ of execution to enforce payment of his fees and disbursements on his bills which have been taxed.

(8) All sums advanced for stamps, registration dues, necessary disbursements, travelling and other expenses may, in addition, be claimed.

(9) A notary's right of action to recover fees or costs due to him shall be barred after 7 years.

## **PART VII – MISCELLANEOUS**

### **38. Register of interdicted persons**

(1) Where a Judge makes an order for the interdiction of any person under the Code Civil Mauricien, the attorney making an application for such an order shall forthwith forward to the Registrar-General the particulars of the order.

(2) Where an order is made under any other enactment which has the effect of preventing a person from acquiring, holding or disposing of movable or immovable property, the person or authority making the order shall forthwith forward to the Registrar-General the particulars of the order.

(3) The Registrar-General shall, from the information made available to him under subsections (1) and (2), make up and keep, in such manner as he thinks fit, a Register of Interdicted Persons, which may be consulted by a notary, an attorney or any other person who can show that he has a legitimate interest to do so.

[S. 38 amended by s. 7 of Act No. 16 of 2009 w.e.f. 7 December 2009.]

### **39. Rules**

(1) The Chamber may, subject to this Act and to the approval of the Association in General Meeting, make such rules as it thinks fit for—

- (a) the general management and affairs of the Association including the conditions of employment of staff;
- (b) the election of members of the Association to serve on the Chamber;
- (c) the raising of funds for the objects of the Association and the charging of subscription fees for membership of the Association;
- (d) the investment and disposal of funds;
- (e) the proceedings of the Chamber;
- (f) the holding of general meetings;
- (g) the setting up and management of a mutual fund or a professional insurance scheme for the protection of the members of the Association;
- (h) laying down a Code of Ethics; and
- (i) any other relevant matter.

(2) Notwithstanding the Interpretation and General Clauses Act, any rules made under subsection (1) shall not be required to be—

- (a) approved by a Minister; or
- (b) laid before the Assembly.

[S. 39 amended by s. 8 of Act No. 16 of 2009 w.e.f. 7 December 2009.]

### **40. Regulations**

(1) The Attorney-General may—

- (a) make such regulations as he thinks fit for the purposes of this Act;
- (b) after consultation with the Chamber, by regulations, provide for an increase in the number of notaries on the Roll.

(2) Any regulations made under subsection (1) (a) may provide for—

- (a) the levying of fees and charges; and
- (b) the amendment of the Schedule.

[S. 40 repealed and replaced by s. 9 of Act No. 16 of 2009 w.e.f. 7 December 2009.]

### **41. Offences**

(1) Any notary who contravenes section 3 (3), 3 (4) (c), 6 (1), 6 (2), 7, 8, 20 (1), 34 (1), 34 (3) or 37 (4) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years.

(2) Any person who contravenes section 6 (3) or 12 (4) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years.

42. – 43. –

**44. Transitional provisions**

(1) Where, on 24 November 2008, a notary has in his possession originals drawn up by or deposited with him which have not been transmitted to the Chief Archivist pursuant to section 58 (3) of the repealed Notaries Act, he shall transmit to the Chief Archivist—

- (a) all the originals, if there are fewer than 20, within 3 months of the commencement of this Act; or
- (b) 20 originals, if there are more than 20, not later than 31 March in each year.

(2) Where, on 24 November 2008, the office of a notary is still vacant on the ground of death or retirement, section 11 (4), (5) and (6) shall apply for the purposes of filling the vacancy.

(3) A deed drawn up before 7 November 1942 shall be valid notwithstanding the fact that it was drawn up in contravention of section 6.

(4) –

(5) Until such time as the Code of Ethics referred to in section 35 comes into effect, every notary shall exercise his profession in accordance with the rules of practice in force on 24 November 2008.

(6) Any proceedings, judicial or otherwise, commenced before and pending on 24 November 2008, by or against the Chamber of Notaries under the repealed Notaries Act shall, on 24 November 2008, be deemed to have been commenced, and may be continued, by or against the Chamber under this Act.

45. –

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**SCHEDULE**

[Section 37]

**PART I**

Any deed in respect of which a proportional duty is leviable, or would have been leviable but for any other enactment, under the Registration Duty Act—

- 2% on the first Rs 250,000 – subject to a minimum charge of Rs 1,000
- 1 ½ % on the next Rs 500,000
- 1% on the next Rs 1,000,000
- ½ % on the remainder

**SCHEDULE—continued**

**PART II**

**Sub-Part A**

Any deed of release, discharge or acquittance—

1% on the first Rs 100,000

$\frac{3}{4}$ % on the next Rs 250,000

$\frac{1}{2}$ % on the next Rs 500,000

$\frac{1}{4}$ % on the remainder

**Sub-Part B**

Any deed of partition—

2% on the first Rs 100,000

1  $\frac{1}{2}$ % on the next Rs 250,000

1% on the next Rs 500,000

$\frac{1}{2}$ % on the remainder

**PART III**

**Sub-Part A**

Any deed of partnership or constitution of a company—

1% on the first Rs 50,000 of the share capital

$\frac{3}{4}$ % on the next Rs 450,000

$\frac{1}{2}$ % on the next Rs 500,000

$\frac{1}{4}$ % on the next Rs 9,000,000

0.15% on the next Rs 10,000,000

0.05% on the remainder

**Sub-Part B**

Amendment to a deed of partnership or constitution of a company—

Half the fee specified in Sub-Part A

**PART IV**

Where a notary acts as *mandator ad negotia*—

1% on the first Rs 50,000

$\frac{3}{4}$ % on the next Rs 100,000

$\frac{1}{2}$ % on the next Rs 850,000

$\frac{1}{4}$ % on the next Rs 9,000,000

0.15% on the next Rs 10,000,000

0.05% on the remainder

**SCHEDULE—continued**

**PART V**

Any document not specified in Part I, II, III or IV—

- (a) signed in the notary's registered office – Rs 1,000 per document or Rs 1000 per hour, whichever is greater
- (b) signed outside the notary's office – Rs 1,500 per hour or part thereof

**PART VI**

Any copy of a document whether by way of transcription, inscription, extract or otherwise—

Rs 500 per copy

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