

PARLIAMENT OF CEYLON

4th Session 1951



Notaries (Amendment) Act, No. 6 of 1951

Date of Assent: March 9, 1951

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AN ACT TO AMEND THE NOTARIES ORDINANCE.

Cap. 91.
(Vol. III.,
p. 33).

[Date of Assent: March 9, 1951.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Ceylon in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Notaries (Amendment) Act, No. 6 of 1951.

Short title.

2. Section 4 of the Notaries Ordinance (hereinafter referred to as "the principal enactment"), is hereby amended as follows:—

Amendment of
section 4 of
Chapter 91.

(1) by the re-numbering of section 4 as section 4 (1); and

(2) by the insertion, immediately after the re-numbered section 4 (1), of the following new sub-section:—

"(2) Every notary appointed under sub-section (1) on or after a date to be prescribed by the Minister and published in the *Gazette*, shall be entitled to practise within the judicial division in which he resides."

3. Section 10 of the principal enactment (as substituted by Ordinance No. 7 of 1943) is hereby amended in sub-section (1), by the omission of the Proviso to that sub-section.

Amendment of
section 10 of
the principal
enactment.

4. Section 11 of the principal enactment is hereby repealed and the following new section is substituted therefor:—

Replacement of
section 11 of
the principal
enactment.

Minister's
power to change
the area within
which a notary
is authorised
to practise.

11. (1) The Minister may on application made in that behalf—

(a) grant to a notary who has a warrant authorising him to practise within a part of the judicial division in which he resides in lieu of the aforesaid warrant, a fresh

warrant authorising him to practise within the whole of such division; and

(b) grant to a notary having a warrant authorising him to practise within the whole or a part of a judicial division in lieu of the aforesaid warrant, a fresh warrant authorising him to practise within the whole of another judicial division.

Cap. 189.

(2) Stamp duty chargeable under the Stamp Ordinance shall not be charged in respect of any fresh warrant granted under sub-section (1) (a) of this section.

Amendment of section 12 of the principal enactment.

5. Section 12 of the principal enactment (as amended by Ordinance No. 51 of 1944), is hereby further amended as follows:—

(1) in sub-section (1), by the substitution, for paragraph (b), of the following new paragraph:—

“ (b) execute a bond to His Majesty, His Heirs and Successors in the amount of two thousand rupees, conditioned for the due and faithful discharge of his duties as a notary, which amount shall be secured either by the hypothecation of immovable property or by the deposit of movable property (such immovable or movable property being property belonging to himself or some other person), or by the guarantee of an approved Guarantee Company; ” ;

(2) by the re-numbering of sub-section (2) (inserted by Ordinance No. 51 of 1944) as sub-section (3);

(3) by the insertion, immediately after sub-section (1), of the following new sub-section:—

“ (2) Every bond referred to in paragraph (b) of sub-section (1) shall be signed in the presence of the District Judge having jurisdiction over the area specified in the warrant of the notary:

Provided that the guarantee of an approved Guarantee Company may be signed on behalf of the Company in the registered office of the Company.”; and

- ★ (4) in re-numbered sub-section (3), by the substitution, for the words “ approved Guarantee Company or Association ” means any public company or association ’, of the words “ approved Guarantee Company ” means any company which is incorporated or registered under the Companies Ordinance, No. 51 of 1938, ’.

6. Section 13 of the principal enactment is hereby amended, by the substitution, for the words “ one thousand ” of the words “ two thousand ”.

Amendment of section 13 of the principal enactment.

7. Section 14 of the principal enactment is hereby repealed, and the following new section is substituted therefor:—

Replacement of section 14 of the principal enactment.

Discharge of Guarantee Company.

14. (1) Any person who has given security on behalf of a notary by the hypothecation of immovable property or by the deposit of movable property or any Guarantee Company bound as surety to a notary may apply to the District Judge having jurisdiction over the area specified in such notary’s warrant to be discharged from any liability incurred by such person or Company under section 12.

(2) The District Judge to whom any person or Guarantee Company applies under sub-section (1) for a discharge of such person’s or Company’s liability may, if he is satisfied that such person or Company has given six weeks’ notice to the notary of his or its intention to make such application and that such person or Company has good cause for claiming such discharge, endorse on the bond an order discharging such person or Company from any liability in respect of any act of the notary done after the date of the order.

Insertion of
new section 14A
in the principal
enactment.

8. The following new section shall be inserted immediately after section 14 of the principal enactment and shall have effect as section 14A of that enactment:—

Notice of
resolution to
wind up
voluntarily to be
communicated
to notary.

14A. (1) Where a Guarantee Company which has bound itself as surety to a notary has passed a resolution for its voluntary winding up, it shall within six weeks of the date of the passing of that resolution give written notice of the fact to such notary.

(2) If default is made in complying with the provisions of subsection (1) of this section, every officer of the Company who is in default and every liquidator of the Company who knowingly and wilfully authorises or permits the default, shall be guilty of an offence and shall be liable on conviction thereof to a fine not exceeding one thousand rupees. In this section, "an officer of the Company who is in default" shall have the same meaning as in section 346 (2) of the Companies Ordinance, No. 51 of 1938.

Replacement of
section 15 of
the principal
enactment.

9. Section 15 of the principal enactment is hereby repealed and the following new section is substituted therefor:—

When notary
to furnish fresh
security.

15. (1) If at any time the security given by or on behalf of any notary shall perish or is lost or if the Guarantee Company bound as surety has been wound-up or its winding-up has commenced, or if any person who has given security by the hypothecation of immovable property or by the deposit of movable property or any Guarantee Company bound as surety is discharged under section 14 (2) from liability, the notary shall execute a fresh bond in accordance with the provisions of section 12.

(2) If in any case to which sub-section (1) applies any notary shall practise or act as a notary without having executed a fresh bond as provided in that sub-section, he shall be guilty of an offence and liable on conviction thereof to the punishment provided in section 13.

10. Section 24 of the principal enactment is hereby amended as follows:—

Amendment of section 24 of the principal enactment.

(1) in sub-section (1), by the substitution, for the words “ fresh warrant in place of the one withdrawn or cancelled.”, of the words “ fresh warrant authorising him to practise within the area in which he was practising immediately preceding such withdrawal or cancellation or within some other area.”; and

(2) in sub-section (2), by the substitution, for all the words from “ Registrar-General ” to the end of that sub-section, of the words “ District Judge having jurisdiction over the area specified in the fresh warrant issued under sub-section (1) of this section, and to the several Commissioners of Requests having jurisdiction within the said area, and to the Registrar-General.”.

11. Section 25 of the principal enactment is hereby repealed, and the following new section is substituted therefor:—

Replacement of section 25 of the principal enactment.

Restoration to or insertion in, the roll of notaries of the notary's name, &c.

25. (1) Upon receipt of a notice transmitted under section 24 (2) by a District Judge, he shall, if the notary's fresh warrant is produced before him, restore to, or insert in, the roll of notaries such notary's name.

(2) The District Judge restoring to, or inserting in, the roll of notaries the name of a notary shall require fresh security to be provided by such notary in terms of section 12.

(3) Every notary, whose name has been restored to, or inserted in, the roll of notaries under sub-section (1)

of this section and who has furnished fresh security in terms of section 12 shall be entitled to execute the office of a notary in conformity with the authority given to him by his fresh warrant.

Amendment of
section 27 of
the principal
enactment.

12. Section 27 of the principal enactment is hereby amended, in sub-section (1) thereof, as follows:—

(a) by the substitution in paragraph (d), for the words “by him has perished or been lost or whether any surety who became bound for him has died or has departed from the Island or become insolvent or been discharged from his obligation as such surety; and”, of the words “by or on behalf of him has perished or been lost, or the Guarantee Company bound as surety for him has been wound-up or its winding-up has commenced, or any person who has given security by the hypothecation of immovable property or by the deposit of movable property or any such Guarantee Company has been discharged under section 14 (2) from liability, ”; and

(b) by the omission of paragraph (e).

Amendment of
section 31 of
the principal
enactment.

13. Section 31 of the principal enactment (as substituted by Ordinance No. 7 of 1943), is hereby amended as follows:—

(1) by the re-numbering of that section as section 31 (1);

(2) in re-numbered section 31 (1), by the substitution, for the words “that are binding upon him,” of the words and figures “or any rule made, approved and published in accordance with the provisions of section 32, binding upon him,”; and

(3) by the insertion immediately after re-numbered section 31 (1), of the following:—

“(2) If any notary has been convicted under the Proviso to sub-section (1) of this section for non-compliance with the terms of a notice calling upon him to comply with the requirements of rule 25 set out in

section 30 relating to the delivery of certain documents to the Registrar of Lands of the district in which the notary resides, and the notary fails within a week of such conviction to deliver the documents specified in the notice to that Registrar, the Minister may, on application made in that behalf by the Registrar-General, suspend the notary from his office as notary for such period as the Minister may deem fit."

14. Section 31A of the principal enactment (inserted by Ordinance No. 7 of 1943), is hereby amended, in sub-section (1) as follows:—

Amendment of section 31A of the principal enactment.

- (1) by the substitution, for the words and figures "section 31, section 32 (2)," of the words and figures "section 31,"; and
- (2) by the substitution, in paragraph (ii) thereof, for the words "discharging any surety or sureties from any liability incurred under any bond executed under section 12.", of the words "discharging any person who has given security on behalf of a notary by the hypothecation of immovable property or by the deposit of movable property or any Guarantee Company bound as surety from any liability incurred under section 12."

15. Section 32 of the principal enactment is hereby repealed and the following new section is substituted therefor:—

Replacement of section 32 of the principal enactment.

Power to make rules.

32. (1) the Minister may make rules for the conduct of notaries, not being proctors, in the discharge of their notarial duties.

(2) No rule made under sub-section (1) of this section shall have effect until that rule has been approved by the Senate and the House of Representatives, and until the rule has been published in the English, Sinhalese and Tamil languages in the *Gazette*.

(3) Every rule made, approved and published in accordance with the preceding provisions of this section shall be as valid and effectual as if it were herein enacted.

Transitional
provisions.

16. In every case where security has been given on behalf of a notary by the personal undertaking of two or more sureties under section 12 of the principal enactment prior to the amendment thereof by this Act, the following provisions shall have effect:—

(1) During the period commencing on the date on which this Act comes into operation and ending on such date (hereinafter called "the appointed date") as may be appointed by the Minister by Order published in the *Gazette*, the provisions of the principal enactment shall continue to apply as though those provisions had not been amended by this Act:

Provided, however, that if at any time it is necessary for such notary to furnish other sufficient security under the principal enactment, such security shall be furnished in accordance with the provisions of section 12 of the principal enactment as amended by this Act.

(2) On or before the appointed date, the notary may execute a fresh bond in accordance with the provisions of section 12 of the principal enactment as amended by this Act, and every person theretofor bound as surety on behalf of such notary shall thereupon be deemed to be discharged from any liability as such surety in respect of any act of such notary done thereafter.

(3) Where a fresh bond is not executed on or before the appointed date as provided in any of the preceding provisions of this section, every person theretofor bound as surety shall, on the day next following the appointed date, be deemed to be discharged from any liability as such surety in respect of any act of such notary done after the appointed date, and the notary shall execute a fresh bond in accordance with the provisions of section 12 of the principal enactment as amended by this Act.