

registered on the register of notaries public and who, at the material time, is not suspended from practice.

Qualifications for practising as a notary public

HK2.03 By section 40D of the Ordinance no person is qualified to practise as a notary public in Hong Kong unless:

- (a) his name is on the register of notaries public;
- (b) his name is on the roll of solicitors;
- (c) he is not suspended from practising as a notary public or as a solicitor;
- (d) he holds either a current practising certificate as a notary public or a current practising certificate as a solicitor issued by the Law Society of Hong Kong, accompanied in the latter case by a current certificate of membership issued by the Hong Kong Society of Notaries.⁴
- (e) he complies with any indemnity rules made by the Council of the Society of Notaries under the Ordinance.⁵

The continuing rights to practise of notaries public registered on the register of notaries public prior to 30 June 2005 were expressly preserved by section 6 of the Legal Practitioners (Amendment) Ordinance 1998.

Appointment

HK2.04 Section 40A(1) of the Ordinance vests the power to appoint notaries public in Hong Kong in the Chief Judge of the High Court, but by section 40A(2) he may designate another judge of the High Court⁶ to exercise that power. The Chief Judge may appoint as a notary public in Hong Kong a person whom he considers to be a fit and proper person to hold that office and who:

- (a) satisfies the following requirements: -
 - (i) his name has been on the roll of solicitors continuously for the whole of the period of 7 years immediately before the date of his application for appointment;
 - (ii) he has practised as a solicitor for a period or periods in aggregate of not less than 7 years;

⁴ The Society was incorporated as a company limited by guarantee on July 5, 1977 and its objects include the promotion of proper professional standards among notaries public, the regulation of the practice of notaries public and the performance or discharge of such duties or responsibilities as may be conferred on it under the Ordinance. For the rule-making powers of the Society, see section 73D of the Ordinance.

⁵ See below at para.HK 2.12.

⁶ The High Court of the Hong Kong Special Administrative Region consists of the Court of First Instance and the Court of Appeal (Hong Kong Reunification Ordinance, section 8, substituting section 3 of the Supreme Court Ordinance (Cap. 4)).

(iii) he has, within the period of 1 year ending on the date of his application for appointment⁷, passed any examination⁸ prescribed by the Council of the Society of Notaries under section 73D⁹ of the Ordinance; and

(b) has complied with any other requirements prescribed by the Council of the Society of Notaries under section 73D with respect to persons applying for appointment as a notary public. These requirements are set out in the Notaries Public (Qualifications for Appointment) Rules (Cap.159AJ)¹⁰ and provide that¹¹ no person may apply for appointment as a notary public unless, at the date of his application:

- (a) he holds
 - (i) a current letter of no objection issued by the Society of Notaries,¹² or
 - (ii) a written notice of refusal to issue the letter of no objection served on him by the Society under section 4(8) of the Rules stating the grounds for refusal, or
 - (iii) a written notice of revocation of a letter of no objection served on him by the Society under section 6(3) of the Rules stating the grounds for revocation, and

(b) he has applied for membership of the Society of Notaries.

A solicitor who has been suspended from practice at any time within the seven-year period prior to the date of his application for appointment as a notary public is regarded as not having been on the roll of solicitors during the whole of the period of suspension.¹³

Application for appointment is made by motion in accordance with sections 12A to 12F of the Admission and Registration Rules (Cap.159B) of the High Court¹⁴, accompanied by the documents therein mentioned¹⁵ and the prescribed fee.¹⁶ A copy of the notice of motion and of each accompanying document is served on the Secretary for Justice and the Society of Notaries.¹⁷

⁷ The Chief Judge has the power in any particular case to specify a different period (s.40A(4)); he may also designate a judge of the High Court to exercise this power (s.40A(4A)).

⁸ See below at para. HK 2.05.

⁹ Inserted by Legal Practitioners (Amendment) Ordinance 1998, s.4.

¹⁰ The text of the Rules is set out in Appendix 2.

¹¹ s.3.

¹² See below at para. HK 2.06.

¹³ Legal Practitioners Ordinance (Cap.159), s.40A (3), as inserted by Legal Practitioners (Amendment) Ordinance 1998.

¹⁴ As inserted by the Admission and Registration (Amendment) Rules 2005; the text of these Rules is set out in Appendix 3.

¹⁵ See Rule 12B as inserted by the Admission and Registration (Amendment) Rules 2005.

¹⁶ Currently HK\$1,135 (Legal Practitioners (Fees) (Amendment) Rules 2005 (Cap. 159D), r. 3).

¹⁷ Admission and Registration Rules (Cap.159B), s.12C, as inserted by the Admission and Registration (Amendment) Rules 2005.

Examinations

HK2.05 As we have mentioned, section 40A of the Ordinance requires a person applying for appointment as a notary public to have passed within the twelve months preceding his application such examination as the Council of the Society of Notaries may prescribe under section 73D. Pursuant to that section, the Council has made the Notaries Public (Examinations) Rules (Cap. 159AH) that came into force on June 30, 2005.¹⁸ These provide for an examination in the following subjects:

- (a) bills of exchange
- (b) notarial practice.

The examination is based on a syllabus as determined from time to time by the Council. Although there is no limit on the number of resits, a pass must be obtained in each of the subjects on the same occasion¹⁹. An application and examination fee is payable to the Council.²⁰

Application for letter of no objection

HK2.06 An application for a letter of no objection may be made to the Society by a person who has passed the examination mentioned above. The application must be accompanied by:²¹

- (a) certified copies of the following documents:
 - (i) a certificate issued by the Registrar of the High Court certifying that the applicant's name has been on the roll of solicitors continuously for the whole of the period of seven years immediately before the date of his application;
 - (ii) a certificate issued by the Law Society of Hong Kong confirming that the applicant has practised as a solicitor for a period or periods in aggregate of not less than seven years;
 - (iii) a certificate from the Society of Notaries certifying that the applicant has passed the prescribed examination;
- (b) a draft of the affidavit in support referred to in section 12B(2)(c) of the Admission and Registration Rules (Cap.159B);²²
- (c) a letter of support endorsed by at least thirty signatories indicating their personal support of the applicant. The signatories must include:
 - (i) at least 5 judicial officers²³
 - (ii) at least 10 practising notaries public, solicitors or barristers.

¹⁸ The text of the Rules is set out in Appendix 5.

¹⁹ Notaries Public (Examinations) Rules, s.7.

²⁰ Currently HK\$2,000 and HK\$10,000 respectively (*ibid.* Schedule).

²¹ See Notaries Public (Qualifications for Appointment) Rules (Cap. 159AJ), s.4.

²² As inserted by the Admission and Registration (Amendment) Rules 2005; see Appendix 3 below.

²³ As defined in the Judicial Officers Recommendation Commission Ordinance (Cap. 92), s.2.

The remaining signatories must be persons of good standing.

- (d) A statutory declaration to the effect that at the date of the application:
 - (i) the applicant is not suspended from practising either as a notary public or as a solicitor; and
 - (ii) if the applicant is entitled to practise the law of a foreign jurisdiction he is not suspended from so practising; and
 - (iii) the applicant has not been convicted in Hong Kong or elsewhere of an offence involving fraud, dishonesty or moral turpitude; and
- (e) such other information as the Society may reasonably require to substantiate the applicant's compliance with paragraphs (a) to (d) above; and
- (f) the prescribed application fee.²⁴

Refusal of application for letter of no objection

The Society may not refuse the application without first giving the applicant an opportunity to make written representations as to why the application should not be refused. Any decision to refuse an application must be notified to the applicant in writing stating the grounds of the refusal²⁵ in order to enable him to pursue, if so advised, his application for appointment notwithstanding that refusal.

Register of notaries public²⁶

The register of notaries public continues to be kept by the Registrar of the High Court and may be inspected by any person without payment. Upon production of a certificate of appointment signed by the Chief Judge and upon payment to the Registrar and to the Society of Notaries of any fees prescribed by the Chief Justice²⁷ of the Court of Final Appeal, the Registrar enters the person appointed on the register of notaries.²⁸

Practising certificates²⁹

Practising certificates as a notary public are issued by the Society of Notaries on application made to the Society in writing in the month of November in any year.³⁰ A person who holds a current practising certificate as a solicitor is not required to obtain a separate practising certificate as a notary public provided that he holds a current certificate of membership issued by the Society of Notaries.³¹ Certificates run for a

²⁴ Currently HK\$3000 (see Notaries Public (Qualifications for Appointment) Rules (Cap.159AJ), Schedule).

²⁵ Notaries Public (Qualifications for Appointment) Rules (Cap.159AJ), s.4 (7) and (8).

²⁶ See Legal Practitioners Ordinance (Cap. 159), s.40C, as inserted by Legal Practitioners (Amendment) Ordinance 1998.

²⁷ Currently HK\$360 (Legal Practitioners (Fees) (Amendment) Rules 2005, s.2).

²⁸ See Rule 12F of Admission and Registration Rules (Cap. 159B), as inserted by the Admission and Registration (Amendment) Rules 2002.

²⁹ See Legal Practitioners Ordinance (Cap.159), ss. 40D(1)(d) and 40E, as inserted by Legal Practitioners (Amendment) Ordinance 1998.

³⁰ But see *ibid.* s. 40E(5). For documents accompanying the application, see Notaries Public (Practising Certificates) Rules (Cap. 159AG), s.2, the text of which is set out in Appendix 6 below.

³¹ Legal Practitioners Ordinance (Cap.159) s. 40D(2) as inserted by Legal Practitioners (Amendment) Ordinance 1998.

period of one year from 1 January next following the date of application.³² Applications must be made on a form approved by the Council of the Society of Notaries and accompanied by such fee as the Council may prescribe.³³ A practising certificate may not be issued unless the applicant complies with the indemnity rules made by the Council under section 73E of the Ordinance³⁴ or is exempt from such rules and has paid to the Society the membership subscription in respect of the year for which the practising certificate is to be issued.³⁵

Refusal to issue practising certificate; issue of conditional certificate

- HK2.10** Section 40E(6) of the Ordinance enables the Society of Notaries to refuse to issue a certificate on grounds prescribed by the Council of the Society.³⁶ It may also issue a practising certificate subject to conditions prescribed by the Council or amend a certificate already issued by adding conditions so prescribed. Failure to comply with any conditions imposed by a notary's practising certificate may lead to suspension or cancellation of the certificate.³⁷ A practising certificate automatically determines in the event of the notary's removal from or striking off the register or if he becomes bankrupt.³⁸ A list of the names and addresses of the notaries public who have obtained practising certificates is published by the Society in the Hong Kong Government Gazette and inclusion of a person on that list is evidence, until the contrary is proved, that he is qualified to act as a notary.³⁹

Discipline of notaries public; handling of complaints

- HK2.11** Section 40G of the Ordinance requires the Chief Justice to appoint a Notaries Public Disciplinary Tribunal Panel consisting of practising notaries and lay persons. In the circumstances specified in section 40F of the Ordinance, a notary public is liable to be disciplined by a Notaries Public Disciplinary Tribunal which consists of two notaries public and one lay person all appointed from the Panel.⁴⁰ The Panel consists of no fewer than 10 and no more than 20 practising notaries public of at least 5 years standing, and not fewer than 5 and no more than 10 lay persons unconnected in any way with practice as a notary public or the practice of law.⁴¹ Members of the Council of the Society of Notaries are ineligible for appointment to the Panel.⁴² The Chief Justice appoints one of the notaries on the Panel as Tribunal Convenor for a three-year period; he may also appoint another notary on the Panel as Deputy Tribunal Convenor.⁴³ Where the Council considers, as a result of a complaint made to it or otherwise, that the notary may be liable to be disciplined the matter is submitted to the Convenor who thereupon constitutes a Notaries Public Disciplinary Tribunal to inquire into the notary's

³² *ibid.* s. 40E(1), but see s. 40E(5).

³³ Currently HK\$2000 on first issue or renewal (Notaries Public (Practising Certificate) Rules (Cap.159AG), Schedule 1).

³⁴ See below para. HK2.12.

³⁵ Legal Practitioners Ordinance (Cap.159) s. 40E(4), as inserted by Legal Practitioners (Amendment) Ordinance 1998.

³⁶ See Notaries Public (Grounds for Refusal to Issue Practising Certificates) Rules (Cap.159AF), the text of which is set out in Appendix 7 below.

³⁷ Legal Practitioners Ordinance (Cap.159), s. 40E(7), as inserted by Legal Practitioners (Amendment) Ordinance 1998.

³⁸ *ibid.* s. 40E(8).

³⁹ *ibid.* s. 40E(9).

⁴⁰ *ibid.* s. 40I.

⁴¹ *ibid.* s. 40G(1).

⁴² *ibid.* s. 40G(2).

⁴³ *ibid.* s. 40G(4).

conduct.⁴⁴ In the event of the Council's delay for more than six months in submitting a complaint to the Convenor, the Chief Judge may, on application by any person or on his own initiative, submit the matter to the Convenor.⁴⁵ The Convenor appoints one of the members of the Tribunal as chairman.⁴⁶

The Tribunal has power to inquire into the conduct of any person in respect of whom it was constituted.⁴⁷ The ancillary powers of the Tribunal are extensive and it may *inter alia* enforce the attendance of witnesses, examine them under oath, compel the production of documents and order the inspection of any property.⁴⁸ The Tribunal's proceedings are as a general rule held *in camera*.⁴⁹ On completion of its inquiry, the Tribunal has power to make such order as it thinks fit (including dismissing the complaint) and such order may include provision for all or any of the following matters⁵⁰:

- (a) striking off the register of notaries public the name of the notary public to whom the inquiry relates;
- (b) suspending the notary public from practice for such period as the Tribunal thinks fit;
- (c) permitting the notary public to continue practice, but subject to conditions which may be imposed for up to 3 years;
- (d) payment by the notary public to the complainant of an amount not exceeding the amount paid or payable to the notary public in relation to the complainant's matters in dispute;
- (e) payment by the notary public to a fund established under rules prescribed under section 73E⁵¹ of an amount not greater than an amount paid out of the fund in respect of that notary;
- (f) payment by the notary public of a penalty not exceeding \$500,000 which shall be paid into the general revenue;
- (g) censure of the notary public;
- (h) payment by any party of the costs of and incidental to the proceedings of the Tribunal and the costs of any prior inquiry or investigation in relation to the matters before the Tribunal, to be taxed by a Master of the High Court on a full indemnity basis, or payment of any amount that the Tribunal considers is a reasonable contribution towards those costs.

⁴⁴ *ibid.* s. 40H(1).

⁴⁵ *ibid.* s. 40H(2).

⁴⁶ *ibid.* s. 40I(3).

⁴⁷ *ibid.* s. 40J(1).

⁴⁸ *ibid.* s. 40K. For detailed rules of procedure, see Notaries Public (Disciplinary Tribunal Proceedings) Rules (Cap. 159AE), the text of which is set out in Appendix 8 below.

⁴⁹ Legal Practitioners Ordinance (Cap.159), s. 40I(7) as inserted by Legal Practitioners (Amendment) Ordinance 1998.

⁵⁰ *ibid.* s. 40J(2).

⁵¹ See below para. HK2.12.

Appeal against any order of the Tribunal lies to the Court of Appeal.⁵² Where a solicitor who is also a notary public is struck off the roll of solicitors, the Registrar is required to strike him off the register of notaries public.⁵³ Likewise, where such a notary is suspended from practice as a solicitor, he is deemed to be suspended from practice as a notary public for the same period.⁵⁴ The Society of Notaries has a general right of audience before a Disciplinary Tribunal and also in the High Court on the hearing of any matter under the Ordinance affecting notaries public.⁵⁵

Indemnity insurance

HK2.12 Section 73E of the Ordinance enables the Council of the Society of Notaries to make rules concerning indemnity against loss arising from claims in respect of civil liability incurred:

- (a) by notaries public or former notaries public in connection with their practice;
- (b) by employees or former employees of a notary public in connection with that notary's practice.

These rules may *inter alia* require notaries or specified classes of notaries to take out and maintain insurance with authorized insurers and prescribe the conditions that a policy must satisfy. They may also authorize or require the Society of Notaries, by itself or jointly with the Law Society, to take out and maintain insurance and require notaries to pay premiums to such policies. The Council may also establish a fund or funds to provide indemnity and require notaries to contribute to any such fund.

⁵² Legal Practitioners Ordinance (Cap.159), s. 40M as inserted by Legal Practitioners (Amendment) Ordinance 1998.

⁵³ *ibid.* s. 40P(1).

⁵⁴ *ibid.* s. 40P(2).

⁵⁵ *ibid.* s. 40Q.

PART 3: POWERS AND DUTIES OF NOTARIES PUBLIC

By section 40B of the Legal Practitioners Ordinance (Cap. 159), a notary public, whether his appointment was made before or after reunification, has all the powers which immediately prior to reunification were exercisable by a notary public under the law of Hong Kong. These include:

HK3.01

- (a) the power to attest, authenticate or certify the due execution of documents [2-03];
- (b) the power to note or protest bills of exchange and to attest by act of honour payment of bills of exchange for honour supra protest [2-06]⁵⁶;
- (c) the power to administer oaths, affirmations or declarations [2-09]⁵⁷.

In addition to the powers specifically mentioned in the Ordinance, notaries public in Hong Kong continue to deal with the following matters in the same manner as they did prior to reunification:

- (a) share and bond drawing operations; [10-01 to 10-08]
- (b) drafting and attestation of mercantile documents; [2-02][2-03][2-04]
- (c) drafting and attestation of wills; [2-08]
- (d) drafting and attestation of powers of attorney granted by individuals and corporations; [8-01 to 8-58]
- (e) certification of copies of documents⁵⁸ [2-07] and translations⁵⁹; [2-04, 2-05]
- (f) noting and drawing up of ship protests. [2-10, 9-32, 9-33]

Notaries public in Hong Kong are included within the categories of persons authorized to undertake conveyancing and probate work for reward.⁶⁰ In practice, however, notaries public in Hong Kong handle conveyancing and probate matters in their capacity of solicitors.

⁵⁶ And see Part 5 below.

⁵⁷ And see Part 6 below.

⁵⁸ Notaries public are specifically authorized to certify copies of entries in ship log books for the purposes of the Shipping and Port Control Ordinance (Cap. 313) (s. 76), the Merchant Shipping (Safety) Ordinance (Cap. 369) (s. 122) and the Merchant Shipping (Seafarers) Ordinance (Cap. 478) (s.34). Note also the Companies Ordinance (Cap. 622), s. 775 concerning the certification of copy documents relating to non-Hong Kong companies (as defined in the Ordinance).

⁵⁹ See in particular the Companies Ordinance (Cap.622), s.4.

⁶⁰ Legal Practitioners Ordinance (Cap.159), ss.47 and 48.

Duties of notaries public

HK3.02 The Notaries Public (Practice) Rules (Cap. 159AI)⁶¹, which came into operation on September 29, 2005, regulate the conduct of notaries in Hong Kong. Section 3 (General Conduct) is in similar terms to rule 5 of the Notaries Practice Rules 2009⁶² applicable to notaries in England and Wales. [2-18, 2-24, A2-15] The following specific provisions of the Hong Kong rules should be noted:

1. Practice Promotion⁶³

A Hong Kong notary or the firm in which he practises may engage in practice promotion by way of advertising or marketing and permit practice promotion on his or its behalf. Such promotion must be truthful, not contain any indecent material, be carried out lawfully and otherwise comply with the Schedule to the Notaries Public (Practice) Rules (Cap. 159AI).

2. Profit sharing⁶⁴

A notary, subject to very limited exceptions, may not share any profit costs arising from his practice as a notary other than with notaries public and solicitors who practise in the same firm in Hong Kong.

3. Inspection of documents by Council of the Society of Notaries⁶⁵

The Rules make provision for the inspection by the Council of any books, records or other documents of a notary public relating to his practice as a notary.

4. Register of records of notarial works⁶⁶

The Rules provide that a notary public must establish and maintain a register of all the notarial works carried out by him. Particulars entered in the register must be retained for not less than six years and in respect of each item of notarial work the notary must enter 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.

⁶¹ The text of the Rules is set out in Appendix 9.

⁶² Since the publication of the 14th edition of *Brooke's Notary* the Master of the Faculties has made the Notaries Practice Rules 2014 replacing the 2009 Rules. The corresponding provision in the 2014 Rules is rule 7.

⁶³ Notaries Public (Practice) Rules, (Cap.159AI), s.4.

⁶⁴ *ibid.* s. 6.

⁶⁵ *ibid.* s. 9.

⁶⁶ *ibid.* s. 10. The rule makes no distinction between notarial acts in the private form and those in the public form [5-02 to 5-05]. In England and Wales, the Notaries Practice Rules 2014, r.23 (formerly r. 20 of the Notaries Practice Rules 2009) require a notary to maintain and permanently preserve a protocol of acts in the public form. The keeping of a notarial protocol is a universal requirement in civil-law jurisdictions and although not mandatory for Hong Kong notaries is nonetheless good practice.

Compliance with anti-money laundering and anti-terrorism financing legislation [2-23]

The following Ordinances form the legislative basis for the anti-money laundering and anti-terrorism financing⁶⁷ procedures with which Hong Kong notaries must comply:

HK3.03

the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) (“DTRPO”);

the Organized and Serious Crimes Ordinance (Cap. 455) (“OSCO”);

the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) (“UNATMO”).

It is important for notaries to be aware of these provisions and to minimise the risk of committing a criminal offence by:

assisting persons known or suspected to be laundering money generated by drug trafficking or any indictable offence;

providing or collecting funds used to commit terrorist acts or making funds available to terrorists or terrorist associates;

failing to report a suspicious case of money laundering or terrorist financing;

tipping off clients who are subject to investigation for an offence of money laundering or terrorist financing;

failing to comply with court orders for the purpose of investigation of crime and to make information available.

For general guidance on the anti-money laundering and anti-terrorism financing legislation and procedures to be adopted to comply with that legislation (including client identification, verification and due diligence, record keeping, staff awareness and training) notaries are referred to Practice Direction P issued by the Law Society of Hong Kong.

⁶⁷ The Securities and Futures Ordinance (Cap. 571), Sched.1 defines money laundering activities as “activities intended to have the effect of making any property-

(a) which is the proceeds obtained from the commission of an offence under the laws of Hong Kong, or of any conduct which if occurred in Hong Kong would constitute an offence under the laws of Hong Kong; or

(b) which in whole or in part, directly or indirectly, represents such proceeds, not to appear to be or so represent such proceeds.”

- (a) evidencing and showing any notarial act of a notary public; and
- (b) bearing the signature and the seal of the notary public.

(3) In this section-

notarial act (公證行為)-

- (a) means the exercise of any of the powers referred to in section 40B of the Legal Practitioners Ordinance (Cap 159) by a notary public; but
- (b) does not include any notarial act done before a diplomatic or consular officer of the People's Republic of China outside the People's Republic of China as referred to in section 10 of the Oaths and Declarations Ordinance (Cap 11);

notary public (公證人) means a person who, at the material time, is qualified to practise as a notary public under section 40D of the Legal Practitioners Ordinance (Cap 159).

PART 5: BILLS OF EXCHANGE, PROMISSORY NOTES AND CHEQUES

The Bills of Exchange Ordinance (Cap.19)⁶⁸ adopts the Bills of Exchange Act 1882 of the United Kingdom with very few variations. The principal variations are as follows:⁶⁹

HK5.01

Section of Ordinance

2. Interpretation

...

"action" means *action or suit* and includes counterclaim and set-off

...

"general holiday" has the same meaning as in the *General Holidays Ordinance (Cap. 149)*⁷⁰

...

["Written" includes printed, and writing includes "print"]

⁶⁸ The text of the Ordinance is set out in Appendix 10 below.

⁶⁹ Words in italic appear in the Ordinance, but not in the Act. Words between square brackets appear in the Act, but are omitted from the Ordinance.

⁷⁰ The General Holidays Ordinance (Cap. 149), s. 5 provides that, subject to the provisions of section 14 of the Bills of Exchange Ordinance (Cap 19), it shall not be necessary for any person to make any payment or to do any other act, including noting or protesting, relating to any negotiable instrument on a general holiday, but all obligation to make such payment or to do any such other act shall apply to the next following day not being itself a general holiday. The same Ordinance (s.6 and Schedule) specifies the following days as general holidays:

- (a) every Sunday;
- (b) the first day of January (or if that day is a Sunday, then the following day);
- (c) Lunar New Year's Day (or if that day is a Sunday, then the fourth day of Lunar New Year);
- (d) the second day of Lunar New Year (or if that day is a Sunday, then the fourth day of Lunar New Year);
- (e) the third day of Lunar New Year (or if that day is a Sunday, then the fourth day of Lunar New Year);
- (f) Ching Ming Festival (or if that day is a Sunday, then the following day);
- (g) Good Friday;
- (h) the day following Good Friday;
- (i) Easter Monday;
- (j) Labour Day, being the first day of May (or if that day is a Sunday, then the following day);
- (k) the Birthday of the Buddha, being the eighth day of the fourth lunar month (or if that day is a Sunday, then the following day);
- (l) Tuen Ng Festival (or if that day is a Sunday, then the following day);
- (m) Hong Kong Special Administrative Region Establishment Day, being the first day of July (or if that day is a Sunday, then the following day);
- (n) National Day, being the first day of October (or if that day is a Sunday, then the following day);
- (o) the day following the Chinese Mid-Autumn Festival (or if that day is a Sunday, then the second day following that Festival) or such other day as the Chief Executive in Council may, by order in the Gazette, appoint in place of that day;
- (p) Chung Yeung Festival (or if that day is a Sunday, then the following day) or such other day as the Chief Executive in Council may, by order in the Gazette, appoint in place of that day;
- (q) Christmas Day (or if that day is a Sunday, then the second weekday after Christmas Day);
- (r) the first weekday after Christmas Day.

Additional days may be appointed and the Schedule amended by the Legislative Council (s. 6). Furthermore, if in any year two general holidays fall on the same day, the next following business day is observed as an additional public holiday (s.6(2)). However, by s.6(3) the Chief Executive in Council may, by order in the Gazette, appoint any day in any year to be observed as an additional general holiday in place of the day that would otherwise be an additional public holiday under s. 6(2).

4. Inland and foreign bills [7-27]

- (1) An inland bill is a bill which is or on the face of it purports to be-
- both drawn and payable within *Hong Kong*; or
 - drawn within *Hong Kong*, upon some person resident therein.
- (2) Any other bill is a foreign bill.
- (3) Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill.

13. Ante-dating and post-dating [7-12]

- (1) Where a bill or an acceptance or any indorsement on a bill is dated, the date shall, unless the contrary is proved, be deemed to be the true date of the drawing, acceptance, or indorsement, as the case may be.
- (2) A bill is not invalid by reason only that it is ante-dated or post-dated, or that it bears date on a Sunday or any other general holiday.

14. Computation of time of payment [7-44, 7-45]

Where a bill is not payable on demand, the day on which it falls due is determined as follows-

- the bill is due and payable in all cases on the last day of the time of payment as fixed by the bill or, if that is a *general holiday*, on the succeeding business day;

...

26. Person signing as agent or in representative capacity

(1) Where a person signs a bill as drawer, indorser, or acceptor, and adds words to his signature, indicating that he signs for or on behalf of a principal or in a representative character, he is not personally liable thereon; but, *subject to section 26A*, the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability.

...

26A. Corporate signatures⁷¹

(1) *A person who makes, accepts or indorses a bill for, in the name of, on behalf of or on account of a company shall not be liable in respect of that making, acceptance or indorsement where, on a proper construction of the bill as a whole, that making, acceptance or indorsement is a making, acceptance or indorsement of that company.*

(2) *In subsection (1), "company" has the meaning assigned to it by section 2(1) of the Companies Ordinance (Cap 622) and includes a non-Hong Kong company as defined by that section.*

⁷¹ This provision has no counterpart in the 1882 Act.

(3) *This section shall apply to the making, acceptance or indorsement of a bill after the commencement of the Bills of Exchange (Amendment) Ordinance 1983 (16 of 1983).*

51. Noting or protest of bill [7-57, 7-63]

....

(4) Subject to the provisions of this Ordinance, *and of the General Holidays Ordinance (Cap 149)*⁷², when a bill is noted or protested, it may be noted on the day of its dishonour and must be noted not later than the next succeeding business day. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

...

72. Rules where laws conflict [7-27, 7-31]

Where a bill drawn in one country is negotiated, accepted, or payable in another, the rights, duties, and liabilities of the parties thereto are determined as follows-

(a) the validity of a bill, as regards requisites in form, is determined by the law of the place of issue, and the validity, as regards requisites in form, of the supervening contracts, such as acceptance or indorsement or acceptance supra protest, is determined by the law of the place where such contract was made:

Provided that-

- where a bill is issued out of *Hong Kong*, it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue;
- where a bill issued out of *Hong Kong* conforms, as regards requisites in form, to the law of *Hong Kong*, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold, or become parties to it in *Hong Kong*;

(b) subject to the provisions of this Ordinance, the interpretation of the drawing, indorsement, acceptance, or acceptance supra protest of a bill is determined by the law of the place where such contract is made:

Provided that where an inland bill is indorsed in a place outside *Hong Kong*, the indorsement shall, as regards the payer, be interpreted according to the law of *Hong Kong*;

(d) the duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonour, or otherwise, are determined by the law of the place where the act is done or the bill is dishonoured;

(d) where a bill is drawn out of but payable in *Hong Kong* and the sum payable is not expressed in the currency of *Hong Kong*, the amount, *if the bill is paid in Hong Kong and in the currency of Hong Kong*, shall, in the absence of any express stipulation, be calculated according to the rate of exchange for sight drafts in *Hong Kong* on the day on which the bill is *actually paid*; and

(e) where a bill is drawn in one country and is payable in another, the due date thereof is determined according to the law of the place where it is payable.

⁷² See above, n. 70.

82. Drafts on bankers payable to order on demand sufficient authority for payment without proof of indorsement

*Any draft or order drawn upon a banker for a sum of money payable to order on demand which shall, when presented for payment, purport to be indorsed by the person to whom the same shall be drawn payable, shall be a sufficient authority to such banker to pay the amount of such draft or order to the bearer thereof: and it shall not be incumbent on such banker to prove that such indorsement or any subsequent indorsement was made by or under the direction or authority of the person to whom the said draft or order was or is made payable either by the drawer or any indorser thereof.*⁷³

83. Protection of bankers paying unindorsed or irregularly indorsed cheques etc.⁷⁴ [7-108]

84. Rights of bankers collecting cheques not indorsed by holders⁷⁵

85. Unindorsed cheques as evidence of payment⁷⁶

86. Protection of bankers collecting payment of cheques, etc⁷⁷ [7-110]

87. Application of provisions of this part to instruments not being bills of exchange.⁷⁸

88. Saving⁷⁹

89. Definition of a promissory note⁸⁰ [7-85]

90. Delivery necessary⁸¹ [7-95]

91. Joint and several notes⁸² [7-92]

92. Note payable on demand⁸³ [7-91]

93. Presentment for payment⁸⁴ [7-99]

94. Liability of maker⁸⁵ [7-98]

95. Application of Part II to notes⁸⁶ [7-84]

96. Good faith⁸⁷

97. Signature⁸⁸ [7-26], [7-29]

98. Computation of time⁸⁹

(1) Where by this Ordinance the time limited for doing any act or thing is less than three days, in reckoning time, non-business days are excluded.

⁷³ This protection in favour of a paying banker has no counterpart in the 1882 Act.

⁷⁴ The corresponding provision is the Cheques Act 1957, s.1. [A1-116]

⁷⁵ The corresponding provision is the Cheques Act 1957, s.2. [A1-117]

⁷⁶ The corresponding provision is the Cheques Act 1957, s.3. [A1-118]

⁷⁷ The corresponding provision is the Cheques Act 1957, s.4. [A1-119]

⁷⁸ The corresponding provision is the Cheques Act 1957, s.5. [A1-120]

⁷⁹ The corresponding provision is the Cheques Act 1957, s.6 [A1-121]

⁸⁰ The corresponding provision is the Bills of Exchange Act 1882, s.83. [A1-97]

⁸¹ The corresponding provision is the Bills of Exchange Act 1882, s.84 [A1-98]

⁸² The corresponding provision is the Bills of Exchange Act 1882, s.85. [A1-99]

⁸³ The corresponding provision is the Bills of Exchange Act 1882, s.86. [A1-100]

⁸⁴ The corresponding provision is the Bills of Exchange Act 1882, s.87. [A1-101]

⁸⁵ The corresponding provision is the Bills of Exchange Act 1882, s.88. [A1-102]

⁸⁶ The corresponding provision is the Bills of Exchange Act 1882, s.89 [A1-103]

⁸⁷ The corresponding provision is the Bills of Exchange Act 1882, s.90 [A1-104]

⁸⁸ The corresponding provision is the Bills of Exchange Act 1882, s.91 [A1-105]

⁸⁹ The corresponding provision is the Bills of Exchange Act 1882, s.92 [A1-106]

(2) "Non-business days", for the purposes of this Ordinance, means *general holidays*.

99. When noting equivalent to protest⁹⁰

100. Protest when notary not accessible⁹¹

101. Crossing of dividend warrant⁹²

102. Saving⁹³

Finally, it should be noted that the following provisions of the 1882 Act have no corresponding provisions in the Ordinance: sections 74A⁹⁴ and 81A⁹⁵.

⁹⁰ The corresponding provision is the Bills of Exchange Act 1882, s. 93 [A1-107]

⁹¹ The corresponding provision is the Bills of Exchange Act 1882, s. 94 [A1-108]

⁹² The corresponding provision is the Bills of Exchange Act 1882, s. 95 [A1-109]

⁹³ The corresponding provision is the Bills of Exchange Act 1882, s. 97. [A1-111]

⁹⁴ Inserted by Deregulation (Bills of Exchange) Order 1996 (UK); sections 73A and 73B of the Ordinance (inserted by Bills of Exchange (Amendment) Ordinance 2003) relating to electronic presentment of cheques correspond to sections 74B and 74C of the 1882 Act inserted by the same Order. [A1-86, A1-87]

⁹⁵ Inserted by Cheques Act 1992, s.1.

- (a) describes itself as a deed¹⁰²; or
- (b) states that it has been sealed; or
- (c) bears any mark, impression or addition intended to be or to represent a seal or the position of a seal.

Proof of instruments creating powers of attorney (Ordinance, section 3)

HK6.04 Under the Powers of Attorney Act 1971, section 3 [8-56] the contents of powers of attorney may be proved in the United Kingdom by means of copies certified by the donor of the power or by a solicitor, notary or stockbroker. Under the Ordinance, such copies may only be proved by the certificate of the donor or of a solicitor.¹⁰³

Companies

HK6.05 The formalities for the execution of deeds (which by definition include powers of attorney) by corporations, including companies, are dealt with in Part 8 below¹⁰⁴. In addition, the following provisions of Hong Kong legislation are relevant to powers of attorney in so far as they may affect Hong Kong companies:

Companies Ordinance (Cap. 622)

121. Contracts made by or on behalf of a company [8-02]

- (1) This section applies to—
 - (a) a contract that would be required by law to be in writing and under seal if made between natural persons;
 - (b) a contract that would be required by law to be in writing, and to be signed by the parties to the contract, if made between natural persons; and
 - (c) a contract that, though made orally and not in writing, would by law be valid if made between natural persons.
- (2) A contract specified in subsection (1)(a) may be made by a company—
 - (a) in writing under the company's common seal (if any); or
 - (b) in writing executed in accordance with section 127(3) and expressed (in whatever words) to be executed by the company.
- (3) A contract specified in subsection (1)(b) may be made on behalf of a company in writing signed by any person acting with the company's authority (whether express or implied).

¹⁰² Cf. the face-value requirement discussed at [11-05].

¹⁰³ This is, however, without prejudice to any other method of proof authorized by any other Ordinance (s. 3(4)). Where a copy of a power of attorney has to be produced outside Hong Kong it is recommended that the conformity of the copy be certified by a notary.

¹⁰⁴ Paras. HK8.02 *et seq.*

(4) A contract specified in subsection (1)(c) may be made on behalf of a company orally by any person acting with the company's authority (whether express or implied).

(5) A contract made in accordance with this section—

- (a) is effective in law; and
- (b) binds the company and its successors and all other parties to the contract.

(6) A contract made in accordance with this section may be varied or discharged in the same manner in which it is authorized by this section to be made.

125. Official seal for use abroad [8-05]

(1) A company with a common seal may have an official seal for use outside Hong Kong.

(2) Such an official seal must be a replica of the company's common seal, but have engraved on it in legible form the name of every place where it is to be used.

(3) A company with an official seal for use in a place may, by writing under its common seal, authorize any person appointed for the purpose to affix, in that place, the official seal to any deed or any other document to which the company is a party.

(4) As between a company and any person dealing with an executing agent of the company, the authority of the agent continues—

- (a) if the authorization mentions a period during which the authority is to continue, until the end of the period;
- or
- (b) if the authorization does not mention such a period, until a notice of revocation or termination of the agent's authority has been given to the person.

(5) The person affixing an official seal must, on the deed or other document to which the seal is affixed, certify in writing the date on which, and the place at which, the seal is so affixed.

(6) A deed or other document to which an official seal is affixed binds the company as if it had been executed under the company's common seal.

(7) In this section—

executing agent (簽立代理人), in relation to a company, means a person authorized by the company under subsection (3).

129. Execution of deeds or other documents by attorney for company [8-05]

(1) A company may, either generally or in respect of any specific matter, by an instrument executed as a deed, empower any person as

its attorney to execute a deed or any other document on its behalf in Hong Kong or elsewhere.

(2) A deed or any other document executed by an attorney on behalf of the company binds the company and has effect as if it were executed by the company.

(3) This section does not affect the operation of any other Ordinance as to the execution of powers of attorney.

Model articles

The Companies Ordinance (Cap. 622), s.78 enables the Financial Secretary by notice published in the Gazette to prescribe model articles for companies. The Companies (Model Articles) Notice (Cap.622H) prescribes model articles for public companies limited by shares, private companies limited by shares and companies limited by guarantee. In relation to the delegation of directors' powers these provide as follows (*public companies*: Sched.1, art.4; *private companies*: Sched.2, art. 5; *companies limited by guarantee*: Sched. 3, art. 4):

(1) Subject to these articles, the directors may, if they think fit, delegate any of the powers that are conferred on them under these articles—

- (a) to any person or committee;
- (b) by any means (including by power of attorney);
- (c) to any extent and without territorial limit;
- (d) in relation to any matter; and
- (e) on any terms and conditions.

(2) If the directors so specify, the delegation may authorize further delegation of the directors' powers by any person to whom they are delegated.

(3) The directors may—

- (a) revoke the delegation wholly or in part; or
- (b) revoke or alter its terms and conditions.

Capacity of companies

It should be noted that by section 115 of the Companies Ordinance (Cap.622) a company has the capacity, rights, powers and privileges of a natural person of full age, including the power to acquire, hold and dispose of land. Apart from "not-for-profit" companies to which a licence has been granted to dispense with the word "Limited" in their name under section 103 of the Ordinance, the inclusion of a company's objects in its articles is optional.¹⁰⁵ However, section 116 of the Ordinance provides that, if the objects of a company are stated in its articles, the company must not do any act that it is not authorized to do by its articles; this, however, is without prejudice to the protection in favor of third parties provided by section 117 of the Companies Ordinance (Cap.622).

¹⁰⁵ Companies Ordinance (Cap.622), s. 82.

Conveyancing and Property Ordinance (Cap. 219)

Execution of Deed by Corporation¹⁰⁶

20(1) In favour of a person dealing with a corporation aggregate in good faith, his successors in title and persons deriving title under or through him or them, a deed shall be deemed to have been duly executed by the corporation if the deed purports to bear the seal of the corporation affixed in the presence of and attested by its secretary or other permanent officer of the corporation and a member of the corporation's board of directors or other governing body or by 2 members of that board or body.

(2) Where a person is empowered to execute a deed by a corporation, he may execute the deed as agent by signing the name of the corporation or his own name and by affixing his own seal.

(3) Where a corporation aggregate is empowered to execute a deed by another person, an officer appointed for that purpose by the board of directors or other governing body of the corporation may execute the deed in the name of such other person; and where a deed purports to be so executed then the deed shall, in favour of a person dealing with the corporation in good faith, be deemed to have been executed by an officer duly authorized.

(4) This section applies to transactions wherever effected, but only to deeds executed after the commencement of this section; except that, in the case of powers of appointment of an officer, they apply whether the power was conferred or the appointment was made before or after the commencement of this section.

Where a power of attorney given by a corporation established in accordance with the laws of any place outside Hong Kong is to be acted upon in Hong Kong [8-51], the following section of the Law Amendment and Reform (Consolidation) Ordinance (Cap. 23) may operate:

Validity of instruments under seal executed by persons not appointed under seal

26(1) The fact that a power of attorney or document of authorization given by a foreign corporation to or in favour of any person is not under seal shall not, if such power of attorney or document of authorization is valid as a power of attorney or document of authorization in accordance with the laws of the place under which such corporation is incorporated, affect, for any purpose intended to be effected within Hong Kong, the validity or effect of any instrument under seal executed on behalf of such corporation by such person, which shall for all such purposes be as valid as if such authority had been under seal.

¹⁰⁶ Cf. Law of Property Act 1925, s. 74(1).

- (c) where a bill is payable at a fixed period after sight, the time begins to run from the date of the acceptance if the bill is accepted, and from the date of noting or protest if the bill is noted or protested for non-acceptance or for non-delivery;
- (d) the term "month" in a bill means calendar month.

[cf. 1882 c. 61 s. 14 U.K.]

Section:	15	Referee in case of need		30/06/1997
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- A10.16** The drawer of a bill and any indorser may insert therein the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonoured by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not, as he may think fit.

[cf. 1882 c. 61 s. 15 U.K.]

Section:	16	Optional stipulations by drawer or indorser		30/06/1997
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- A10.17** The drawer of a bill and any indorser may insert therein an express stipulation-
- (a) negating or limiting his own liability to the holder;
- (b) waiving, as regards himself, some or all of the holder's duties.

[cf. 1882 c. 61 s. 16 U.K.]

Section:	17	Definition and requisites of acceptance		30/06/1997
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- A10.18** (1) The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer.
- (2) An acceptance is invalid unless it complies with the following conditions, namely-
- (a) it must be written on the bill and be signed by the drawee. The mere signature of the drawee, without additional words, is sufficient;
- (b) it must not express that the drawee will perform his promise by any other means than the payment of money.

[cf. 1882 c. 61 s. 17 U.K.]

Section:	18	Time for acceptance		30/06/1997
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- A10.19** (1) A bill may be accepted-
- (a) before it has been signed by the drawer, or while otherwise incomplete;
- (b) when it is overdue, or after it has been dishonoured by a previous refusal to accept or by non-payment.

- (2) When a bill payable after sight is dishonoured by non-acceptance, and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment of the drawee for acceptance.

(Amended 51 of 1911; 63 of 1911 Schedule)

[cf. 1882 c. 61 s. 18 U.K.]

Section:	19	General and qualified acceptance		30/06/1997
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- (1) An acceptance is either (a) general; or (b) qualified.
- (2) A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.
- (3) In particular, an acceptance is qualified which is-
- (a) conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated;
- (b) partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;
- (c) local, that is to say, an acceptance to pay only at a particular specified place; an acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere;
- (d) qualified as to time;
- (e) the acceptance of some one or more of the drawees, but not of all.

[cf. 1882 c. 61 s. 19 U.K.]

Section:	20	Inchoate instruments		30/06/1997
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- (1) Where a simple signature on a blank paper is delivered by the signer in order that it may be converted into a bill, it operates as a prima facie authority to fill it up as a complete bill for any amount, using the signature for that of the drawer, or the acceptor, or an indorser; and, in like manner, when a bill is wanting in any material particular, the person in possession of it has a prima facie authority to fill up the omission in any way he thinks fit. (Amended 31 of 1981 s. 65)

- (2) In order that any such instrument, when completed, may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time and strictly in accordance with the authority given. Reasonable time for this purpose is a question of fact: Provided that if any such instrument after completion is negotiated to a holder in due course, it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given.

[cf. 1882 c. 61 s. 20 U.K.]

Section:	21	Delivery		30/06/1997
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A10.22

(1) Every contract on a bill, whether it is the drawer's, the acceptor's or an indorser's, is incomplete and revocable, until delivery of the instrument in order to give effect thereto:

Provided that where an acceptance is written on a bill, and the drawee gives notice to or according to the directions of the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable.

(2) As between immediate parties, and as regards a remote party other than a holder in due course, the delivery-

- (a) in order to be effectual, must be made either by or under the authority of the party drawing, accepting, or indorsing, as the case may be;
- (b) may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill; but if the bill is in the hands of a holder in due course, a valid delivery of the bill by all parties prior to him, so as to make them liable to him, is conclusively presumed.

(3) Where a bill is no longer in the possession of a party who has signed it as drawer, acceptor, or indorser, a valid and unconditional delivery by him is presumed until the contrary is proved.

[cf. 1882 c. 61 s. 21 U.K.]

Section:	22	Capacity of parties		30/06/1997
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Capacity and authority of parties

A10.23

(1) Capacity to incur liability as a party to a bill is co-extensive with capacity to contract:

Provided that nothing in this section shall enable a corporation to make itself liable as drawer, acceptor, or indorser of a bill unless it is competent to do so under the law relating to corporations. (Amended 50 of 1911; 62 of 1911 Schedule)

(2) Where a bill is drawn or indorsed by an infant, minor, or corporation having no capacity or power to incur liability on a bill, the drawing or indorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto.

[cf. 1882 c. 61 s. 22 U.K.]

Section:	23	Signature essential to liability		30/06/1997
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A10.24

No person is liable as drawer, indorser, or acceptor of a bill who has not signed it as such:

Provided that-

- (a) where a person signs a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name;

- (b) the signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm.

[cf. 1882 c. 61 s. 23 U.K.]

Section:	24	Forged or unauthorized signature		30/06/1997
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Subject to the provisions of this Ordinance, where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorized signature is wholly inoperative, and no right to retain the bill, or to give a discharge therefor, or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority:

Provided that nothing in this section shall affect the ratification of an unauthorized signature not amounting to a forgery.

[cf. 1882 c. 61 s. 24 U.K.]

Section:	25	Procurator signature		30/06/1997
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A signature by procurator operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the actual limits of his authority.

[cf. 1882 c. 61 s. 25 U.K.]

Section:	26	Person signing as agent or in representative capacity		30/06/1997
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(1) Where a person signs a bill as drawer, indorser, or acceptor, and adds words to his signature, indicating that he signs for or on behalf of a principal or in a representative character, he is not personally liable thereon; but, subject to section 26A, the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability. (Amended 16 of 1983 s. 2)

(2) In determining whether a signature on a bill is that of the principal or that of the agent by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted.

[cf. 1882 c. 61 s. 26 U.K.]

Section:	26A	Corporate signatures	L.N. 163 of 2013	03/03/2014
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(1) A person who makes, accepts or indorses a bill for, in the name of, on behalf of or on account of a company shall not be liable in respect of that making, acceptance or indorsement where, on a proper construction of the bill as a whole, that making, acceptance or indorsement is a making, acceptance or indorsement of that company.

(2) In subsection (1), "company" (公司) has the meaning given by section 2(1) of the Companies Ordinance (Cap 622) and includes a non-Hong Kong company as defined by that section. (Amended 28 of 2012 ss. 912 & 920)

A10.25

A10.26

A10.27

A10.28

(3) This section shall apply to the making, acceptance or indorsement of a bill after the commencement of the Bills of Exchange (Amendment) Ordinance 1983 (16 of 1983).

(Added 16 of 1983 s. 3)

Section:	27	Value and holder for value	30/06/1997
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Consideration for bill

A10.29 (1) Valuable consideration for a bill may be constituted by-

- (a) any consideration sufficient to support a simple contract;
- (b) an antecedent debt or liability. Such a debt or liability is deemed valuable consideration whether the bill is payable on demand or at a future time.

(2) Where value has at any time been given for a bill, the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time.

(3) Where the holder of a bill has a lien on it, arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien.

[cf. 1882 c. 61 s. 27 U.K.]

Section:	28	Accommodation party	30/06/1997
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A10.30 (1) An accommodation party to a bill is a person who has signed a bill as drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person.

(2) An accommodation party is liable on the bill to a holder for value; and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not.

[cf. 1882 c. 61 s. 28 U.K.]

Section:	29	Holder in due course	30/06/1997
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A10.31 (1) A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions, namely-

- (a) that he became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact;
- (b) that he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

(2) In particular, the title of a person who negotiates a bill is defective within the meaning of this Ordinance when he obtained the bill, or the acceptance thereof, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration,

or when he negotiates it in breach of faith or in such circumstances as amount to a fraud.

(3) A holder (whether for value or not) who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder.

[cf. 1882 c. 61 s. 29 U.K.]

Section:	30	Presumption of value and good faith	30/06/1997
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(1) Every party whose signature appears on a bill is prima facie deemed to have become a party thereto for value. **A10.32**

(2) Every holder of a bill is prima facie deemed to be a holder in due course; but if, in an action on a bill, it is admitted or proved that the acceptance, issue, or subsequent negotiation of the bill is affected with fraud, duress, or force and fear, or illegality, the burden of proof is shifted unless and until the holder proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill.

[cf. 1882 c. 61 s. 30 U.K.]

Section:	31	Negotiation of bill	30/06/1997
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Negotiation of bill

(1) A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill. **A10.33**

(2) A bill payable to bearer is negotiated by delivery.

(3) A bill payable to order is negotiated by the indorsement of the holder completed by delivery.

(4) Where the holder of a bill payable to his order transfers it for value without indorsing it, the transfer gives the transferee such title as the transferor had in the bill, and the transferee in addition acquires the right to have the indorsement of the transferor.

(5) Where any person is under obligation to indorse a bill in a representative capacity, he may indorse the bill in such terms as to negative personal liability.

[cf. 1882 c. 61 s. 31 U.K.]

Section:	32	Requisites of valid indorsement	30/06/1997
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An indorsement in order to operate as a negotiation must comply with the following conditions, namely- **A10.34**

- (a) it must be written on the bill itself and be signed by the indorser. The simple signature of the indorser on the bill, without additional words, is sufficient. An indorsement written on an allonge, or on a "copy" of a bill issued or negotiated in a country where "copies" are recognized, is deemed to be written on the bill itself;

- (b) it must be an indorsement of the entire bill. A partial indorsement, that is to say, an indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the bill to two or more indorsees severally, does not operate as a negotiation of the bill;
- (c) where a bill is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others;
- (d) where, in a bill payable to order, the payee or indorsee is wrongly designated or his name is mis-spelt, he may indorse the bill as therein described, adding, if he thinks fit, his proper signature;
- (e) where there are two or more indorsements on a bill, each indorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved;
- (f) an indorsement may be made in blank or special. It may also contain terms making it restrictive.

[cf. 1882 c. 61 s. 32 U.K.]

Section:	33	Conditional indorsement	30/06/1997
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- A10.35** Where a bill purports to be indorsed conditionally, the condition may be disregarded by the payer, and payment to the indorsee is valid whether the condition has been fulfilled or not.

[cf. 1882 c. 61 s. 33 U.K.]

Section:	34	Indorsement in blank and special indorsement	30/06/1997
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- A10.36** (1) An indorsement in blank specifies no indorsee, and a bill so indorsed becomes payable to bearer.

(2) A special indorsement specifies the person to whom, or to whose order, the bill is to be payable.

(3) The provisions of this Ordinance relating to a payee apply, with the necessary modifications, to an indorsee under a special indorsement.

(4) When a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the indorser's signature a direction to pay the bill to or to the order of himself or some other person.

[cf. 1882 c. 61 s. 34 U.K.]

Section:	35	Restrictive indorsement	30/06/1997
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- A10.37** (1) An indorsement is restrictive which prohibits the further negotiation of the bill or which expresses that it is a mere authority to deal with the bill as thereby directed and not a transfer of the ownership thereof, as, for example, if a bill is indorsed "Pay D only," or "Pay D for the account of X," or "Pay D or order for collection."

(2) A restrictive indorsement gives the indorsee the right to receive payment of the bill and to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee, unless it expressly authorizes him to do so.

(3) Where a restrictive indorsement authorizes further transfer, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement.

[cf. 1882 c. 61 s. 35 U.K.]

Section:	36	Negotiation of overdue or dishonoured bill	30/06/1997
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(1) Where a bill is negotiable in its origin, it continues to be negotiable until it has been-

(a) restrictively indorsed; or

(b) discharged by payment or otherwise.

(2) Where an overdue bill is negotiated, it can only be negotiated subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which the person from whom he took it had.

(3) A bill payable on demand is deemed to be overdue, within the meaning and for the purposes of this section, when it appears on the face of it to have been in circulation for an unreasonable length of time. What is an unreasonable length of time for this purpose is a question of fact.

(4) Except where an indorsement bears date after the maturity of the bill, every negotiation is prima facie deemed to have been effected before the bill was overdue.

(5) Where a bill which is not overdue has been dishonoured, any person who takes it with notice of the dishonour takes it subject to any defect of title attaching thereto at the time of dishonour, but nothing in this subsection shall affect the rights of a holder in due course.

[cf. 1882 c. 61 s. 36 U.K.]

Section:	37	Negotiation of bill to party already liable thereon	30/06/1997
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Where a bill is negotiated back to the drawer, or to a prior indorser, or to the acceptor, such party may, subject to the provisions of this Ordinance, reissue and further negotiate the bill, but he is not entitled to enforce payment of the bill against any intervening party to whom he was previously liable.

[cf. 1882 c. 61 s. 37 U.K.]

Section:	38	Rights and powers of holder	30/06/1997
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The rights and powers of the holder of a bill are as follows-

A10.38

A10.39

A10.40

- (a) he may sue on the bill in his own name;
- (b) where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill;
- (c) where his title is defective-
- (i) if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill; and
 - (ii) if he obtains payment of the bill, the person who pays him in due course gets a valid discharge for the bill.

[cf. 1882 c. 61 s. 38 U.K.]

Section:	39	When presentment for acceptance is necessary		30/06/1997
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General duties of the holder

A10.41

- (1) Where a bill is payable after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument.
- (2) Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the place of business or residence of the drawee, it must be presented for acceptance before it can be presented for payment.
- (3) In no other case is presentment for acceptance necessary in order to render liable any party to the bill.
- (4) Where the holder of a bill, drawn payable elsewhere than at the place of business or residence of the drawee, has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and indorsers.

[cf. 1882 c. 61 s. 39 U.K.]

Section:	40	Time for presenting bill payable after sight		30/06/1997
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A10.42

- (1) Subject to the provisions of this Ordinance, when a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time.
- (2) If he does not do so, the drawer and all indorsers prior to that holder are discharged.
- (3) In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case.

[cf. 1882 c. 61 s. 40 U.K.]

Section:	41	Rules as to presentment for acceptance, and excuses for non-presentment		30/06/1997
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(1) A bill is duly presented for acceptance which is presented in accordance with the following rules-

A10.43

- (a) the presentment must be made by or on behalf of the holder to the drawee, or to some person authorized to accept or refuse acceptance on his behalf, at a reasonable hour on a business day and before the bill is overdue;
- (b) where a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, then presentment may be made to him only;
- (c) where the drawee is dead, presentment may be made to his personal representative;
- (d) where the drawee is bankrupt, presentment may be made to him or to his trustee or assignee;
- (e) where authorized by agreement or usage, a presentment through the Post Office is sufficient.

(2) Presentment in accordance with these rules is excused, and a bill may be treated as dishonoured by non-acceptance-

- (a) where the drawee is dead or bankrupt, or is a fictitious person or a person not having capacity to contract by bill;
- (b) where, after the exercise of reasonable diligence, such presentment cannot be effected;
- (c) where, although the presentment has been irregular, acceptance has been refused on some other ground.

(3) The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured does not excuse presentment.

[cf. 1882 c. 61 s. 41 U.K.]

Section:	42	Non-acceptance		30/06/1997
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When a bill is duly presented for acceptance and is not accepted within the customary time, the person presenting it must treat it as dishonoured by non-acceptance. If he does not, the holder shall lose his right of recourse against the drawer and indorsers.

A10.44

[cf. 1882 c. 61 s. 42 U.K.]

Section:	43	Dishonour by non-acceptance and its consequences	30/06/1997
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A10.45

(1) A bill is dishonoured by non-acceptance-

- (a) when it is duly presented for acceptance, and such an acceptance as is prescribed by this Ordinance is refused or cannot be obtained; or
- (b) when presentment for acceptance is excused and the bill is not accepted.

(2) Subject to the provisions of this Ordinance, when a bill is dishonoured by non-acceptance, an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary.

[cf. 1882 c. 61 s. 43 U.K.]

Section:	44	Duties as to qualified acceptances	30/06/1997
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A10.46

(1) The holder of a bill may refuse to take a qualified acceptance, and, if he does not obtain an unqualified acceptance, may treat the bill as dishonoured by non-acceptance.

(2) Where a qualified acceptance is taken, and the drawer or an indorser has not expressly or impliedly authorized the holder to take a qualified acceptance or does not subsequently assent thereto, such drawer or indorser is discharged from his liability on the bill. The provisions of this subsection do not apply to a partial acceptance, whereof due notice has been given. Where a foreign bill has been accepted as to part, it must be protested as to the balance.

(3) When the drawer or indorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder, he shall be deemed to have assented thereto.

[cf. 1882 c. 61 s. 44 U.K.]

Section:	45	Rules as to presentment for payment	30/06/1997
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A10.47

Subject to the provisions of this Ordinance, a bill must be duly presented for payment. If it is not so presented, the drawer and indorsers shall be discharged. A bill is duly presented for payment which is presented in accordance with the following rules-

- (a) where the bill is not payable on demand, presentment must be made on the day it falls due;
- (b) where the bill is payable on demand, then, subject to the provisions of this Ordinance, presentment must be made within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time after its indorsement, in order to render the indorser liable. In determining what is a reasonable time, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case;
- (c) presentment must be made by the holder, or by some person authorized to receive payment on his behalf, at a reasonable hour on a business day, at the proper place as hereinafter defined, either to the person designated by the bill

as payer or to some person authorized to pay or refuse payment on his behalf, if, with the exercise of reasonable diligence, such person can there be found;

(d) a bill is presented at the proper place-

- (i) where a place of payment is specified in the bill and the bill is there presented;
- (ii) where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented;
- (iii) where no place of payment is specified and no address given, and the bill is presented at the drawee's or acceptor's place of business, if known, and, if not, at his ordinary residence, if known;
- (iv) in any other case, if presented to the drawee or acceptor wherever he can be found, or if presented at his last-known place of business or residence;

(e) where a bill is presented at the proper place, and, after the exercise of reasonable diligence, no person authorized to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required;

(f) where a bill is drawn upon or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all;

(g) where the drawee or acceptor of a bill is dead, and no place of payment is specified, presentment must be made to a personal representative, if such there be, and, with the exercise of reasonable diligence, he can be found;

(h) where authorized by agreement or usage, a presentment through the Post Office is sufficient.

[cf. 1882 c. 61 s. 45 U.K.]

Section:	46	Excuses for delay or non-presentment for payment	30/06/1997
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(1) Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.

(2) Presentment for payment is dispensed with-

- (a) where, after the exercise of reasonable diligence, presentment, as required by this Ordinance, cannot be effected. The fact that the holder has reason to believe that the bill will, on presentment, be dishonoured does not dispense with the necessity for presentment;
- (b) where the drawee is a fictitious person;
- (c) as regards the drawer, where the drawee or acceptor is not bound, as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid, if presented;

A10.48

- (d) as regards an indorser, where the bill was accepted or made for the accommodation of that indorser, and he has no reason to expect that the bill would be paid, if presented;
- (e) by waiver of presentment, express or implied.

[cf. 1882 c. 61 s. 46 U.K.]

Section:	47	Dishonour by non-payment		30/06/1997
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A10.49

(1) A bill is dishonoured by non-payment-

- (a) when it is duly presented for payment and payment is refused or cannot be obtained; or
- (b) when presentment is excused and the bill is overdue and unpaid.

(2) Subject to the provisions of this Ordinance, when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer and indorsers accrues to the holder.

[cf. 1882 c. 61 s. 47 U.K.]

Section:	48	Notice of dishonour and effect of non-notice		30/06/1997
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A10.50

Subject to the provisions of this Ordinance, when a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged:

Provided that-

- (a) where a bill is dishonoured by non-acceptance and notice of dishonour is not given, the rights of a holder in due course subsequent to the omission shall not be prejudiced by the omission;
- (b) where a bill is dishonoured by non-acceptance and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment, unless the bill has in the meantime been accepted.

[cf. 1882 c. 61 s. 48 U.K.]

Section:	49	Rules as to notice of dishonour		30/06/1997
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A10.51

Notice of dishonour, in order to be valid and effectual, must be given in accordance with the following rules-

- (a) the notice must be given by or on behalf of the holder or by or on behalf of an indorser who, at the time of giving it, is himself liable on the bill;
- (b) the notice may be given by an agent, either in his own name or in the name of any party entitled to give notice, whether that party is his principal or not;

- (c) where the notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior indorsers who have a right of recourse against the party to whom it is given;
- (d) where the notice is given by or on behalf of an indorser entitled to give notice as hereinbefore provided, it enures for the benefit of the holder and all indorsers subsequent to the party to whom notice is given;
- (e) the notice may be given in writing or by personal communication, and may be given in any terms which sufficiently identify the bill, and intimate that the bill has been dishonoured by non-acceptance or non-payment;
- (f) the return of a dishonoured bill to the drawer or an indorser is, in point of form, deemed a sufficient notice of dishonour;
- (g) a written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled thereby;
- (h) where the notice is required to be given to any person, it may be given either to the party himself or to his agent in that behalf;
- (i) where the drawer or indorser is dead, and the party giving notice knows it, the notice must be given to a personal representative, if such there be, and, with the exercise of reasonable diligence, he can be found;
- (j) where the drawer or indorser is bankrupt, the notice may be given either to the party himself or to his trustee or assignee;
- (k) where there are two or more drawers or indorsers who are not partners, the notice must be given to each of them, unless one of them has authority to receive such notice for the others;
- (l) the notice may be given as soon as the bill is dishonoured and must be given within a reasonable time thereafter. In the absence of special circumstances, notice is not deemed to have been given within a reasonable time, unless-
- (i) where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill;
- (ii) where the person giving and the person to receive notice reside in different places, the notice is sent off on the day after the dishonour of the bill, if there is a post at a convenient hour on that day, and, if there is no such post on that day, then by the next post thereafter;
- (m) where a bill when dishonoured is in the hands of an agent, he may either himself give notice to the parties liable on the bill or he may give notice to his principal. If he gives notice to his principal, he must do so within the same time as if he were the holder, and the principal, upon receipt of such notice, has