

CONSOLIDATED TO 1 JUNE 2020

LAWS OF SEYCHELLES

CHAPTER 149

NOTARIES ACT, 1991

[1st July, 1995]

Act 4 of 1991
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Act 16 of 2020

ARRANGEMENT OF SECTIONS

NOTARIES ACT, 1991

PART I - PRELIMINARY

1. Short title and commencement
2. Interpretation
3. Principal role of Notaries

**PART II - APPOINTMENT AND QUALIFICATIONS OF
NOTARIES, OFFICIAL NOTARY AND ASSISTANT OFFICIAL
NOTARIES**

4. Appointment of notaries
5. Qualification for appointment as a notary
6. Examination Board
7. Person who may sit for examination
8. Roll of Notaries
9. Pre-condition before starting to practise as notary
10. Resignation of a notary
11. Suspension or removal of a notary by court
12. Reinstatement
13. Official Notary and Assistant Official Notary
14. Acts which a notary may not perform

**PART III- MANNER OF DRAWING UP AND CONTENT OF
DEEDS**

15. Manner of drawing up deeds and content of deeds drawn up by a notary generally
16. Certain deeds required to be made before a second notary or two witnesses
17. Restriction regarding deed founded on another deed
18. Special rules as to wills
19. Special requirement with regard to deed of acquittance
20. Registrar General may refuse to register etc deeds in certain cases

21. Deed void in certain circumstances
22. Notarial deed is authentic document

PART IV - ARCHIVES, COPIES OF DEEDS ETC

23. Safekeeping of original and authenticated copy of deeds
24. Delivery of copy of deed
25. Register of Summaries
26. Archives of notary to be deposited at Seychelles Archives
27. Attorney-General may cause archives to be deposited with Seychelles Archives etc
28. Handing over of archives of a notary to another notary
29. Archives of a notary who has died
30. Executory copy
31. Notary to register etc deeds drawn up by him
32. Seal
33. Leave of absence
34. Legalization of deeds
35. Fees
36. Agreement in respect of fees
37. Offences
38. Regulations, Rules
39. Repeal of Cap 85

SCHEDULE - MANNER OF DRAWING UP AND CONTENT OF DEEDS

SUBSIDIARY LEGISLATION: Notaries (Fees and Costs) Regulations

SCHEDULE

Part I – SCALE OF FEES

Part II – MISCELLANEOUS

PART I - PRELIMINARY

Short title and commencement

1. This Act may be cited as the Notaries Act.

Interpretation

2. In this Act -

"archives", in respect of a notary, means all deeds, registers of summaries and other documents kept or required to be kept by the notary under this Act or any other written law;

"Curator of Seychelles Archives" means the person referred to in the Seychelles Archives Act;

"examination board" means the examination board established under section 6;

"notarial deed" means a deed drawn up by or before a notary in accordance with this Act;

"prescribed fees" means fees prescribed under this Act in respect of the services of a notary;

"Seychelles Archives" means the Seychelles Archives established under the Seychelles Archives Act;

"stamp duty" means stamp duty under the Stamp Duty Act and "stamped" shall be construed accordingly;

Principal role of Notaries

3. A notary is a public official whose duty shall be -

(a) to draw up any document which a person is required by law, or desires, -

(i) to invest with the character of authenticity which is attached to a document of a public authority; or

(ii) to establish a fixed date for the document in terms of the Civil Code;

(b) subject to this Act -

(i) to keep custody of the original of documents referred to in paragraph (a);

(ii) to furnish executory or authenticated copies of documents referred to in paragraph (a) under this Act.

PART II - APPOINTMENT AND QUALIFICATIONS OF NOTARIES, OFFICIAL NOTARY AND ASSISTANT OFFICIAL NOTARIES

Appointment of notaries

4. (1) The President may appoint a person qualified under this Act to be a notary.

(2) Subject to this Act, a person appointed as a notary under subsection (1) shall hold office for life but may resign his office or be suspended or removed from office.

Qualification for appointment as a notary

5. (1) A person shall not be appointed a notary -

(a) unless -

- (i) he is a Seychellois;
- (ii) he is over the age of 25;
- (iii) he is of good character;
- (iv) he -

A. has passed an examination in law before the examination board and has obtained a certificate of proficiency from the board; or

B. is an attorney-at-law and has been admitted as such for, subject to subsection (2), not less than 5 years;

(b) if he is an undischarged bankrupt or has been convicted of an offence involving dishonesty.

(2) The President may, in any case where he sees fit to do so, dispense with or shorten the period of 5 years referred to in subsection (1)(a)(iv)B.

Examination Board

6. (1) There shall be an examination board which shall be responsible for the conduct of examinations for persons qualified under this Act who desire to be appointed notary under this Act.

(2) The examination board shall consist of at least 3 persons to be appointed by the President, after consultation with the Chief Justice, from amongst persons who are knowledgeable in law generally and in particular in the laws of Seychelles.

(3) The President shall appoint one of the members of the examination board to be chairman.

(4) Matters before the examination board shall be decided by a majority of votes.

(5) Each member of the examination board shall have one vote and the chairman shall have in addition a casting vote in the event of an equality of votes.

(6) A member of the examination board shall not sit on the board if the person being examined is serving as a clerk or is an employee in his chambers or is a relative in direct line, whatever may be the degree of relationship, or in the collateral line, up to and including the degree of uncle or nephew.

(7) Subject to this section, the examination board shall regulate its own proceedings.

Person who may sit for examination

7. A person shall not be admitted to examination by the examination board unless he qualifies

under this Act.

Roll of Notaries

8. (1) The Registrar of the Supreme Court shall keep a roll of notaries in which he shall enter the names and other prescribed particulars of persons appointed as notaries.

(2) The Registrar of the Supreme Court shall maintain the roll of notaries up-to-date and may for this purpose remove any obsolete entries from the roll.

Pre-condition before starting to practise as notary

9. A person appointed as a notary shall not practise as such unless he -

- (a) furnishes security in accordance with this Act;
- (b) takes and subscribes the Oath of Allegiance and the Official Oaths under the Official Oaths Act, or any other written law;
- (c) complies with any other written law requiring him to hold a licence before providing legal services as a notary.

Resignation of a notary

10. (1) A notary may, after giving not less than 3 months prior notice in writing to the Attorney-General, resign his office.

(2) A notary who intends to resign shall submit with his notice under subsection (1) a scheme relating to the winding-up of his practice and the handing over or disposal of his archives for the approval of the Attorney-General.

(3) The Attorney-General may approve the scheme submitted under subsection (2) subject to such modification or condition as he thinks fit and the notary shall comply with the scheme as approved by the Attorney-General.

Suspension or removal of a notary by court

11. (1) The Supreme Court may, subject to this section -

- (a) suspend or remove from office a notary -
 - (i) who is guilty of any malpractice or misconduct;
 - (ii) who consistently fails to comply with the provisions of this Act relating to his archives or to any record he is required to keep under this Act;
 - (iii) who has committed any offence under a written law which, in the opinion of the Court, makes him unfit to continue to practise as a notary;

(vi) who fails to perform his functions as a notary; or

(v) where the Court believes that he has ceased to be a fit and proper person to perform the functions of a notary;

(b) suspend from practice a notary where the Court is not satisfied that the security furnished by the notary for the purposes of this Act is sufficient or good enough for the purposes of this Act.

(2) The Supreme Court may -

(a) instead of suspending or removing a notary under subsection (1) impose a fine on the notary, or order the notary to pay such compensation as the Court thinks fit;

(b) when suspending or removing a notary from office under subsection (1) or imposing a fine or ordering payment of compensation under paragraph (a), make such other order, including -

(i) an order relating to the security given by the notary under or for the purposes of this Act;

(ii) an order relating to the assets of the notary or of the firm of notaries or legal practitioners in which the notary is a partner,

as it thinks fit.

(3) Where the Supreme Court removes a notary under subsection (1), it shall require him to submit for the approval of the Attorney-General a scheme relating to the handing over or disposal of his archives.

(4) The Attorney-General may approve the scheme submitted under subsection (3) subject to such modification or condition as he thinks fit and the person who has been removed from office shall comply with the scheme as approved by the Attorney-General.

(5) For the purpose of this section the Supreme Court may act on its own motion or upon an application in writing of the Attorney-General or the Bar Association of Seychelles.

(6) Before suspending or removing a notary from office under this section the Supreme Court shall inform the notary of the charge or complaint against him and give the notary an opportunity to be heard in person or by counsel as the notary thinks fit.

(7) The Registrar of the Supreme Court shall on the making of an order of suspension or removal under this section amend the roll of notaries accordingly.

(8) The Chief Justice may make rules for the purpose of proceedings for the suspension or removal of a notary from office under this section.

Reinstatement

12. (1) The Supreme Court may, where it has suspended or removed a person as a notary under section 11, on an application by the person suspended or removed, remove the suspension or reinstate the person subject to such condition as it thinks fit.

(2) The Registrar of the Supreme Court shall, on the removal of a suspension or the reinstatement of a notary amend the roll of notaries accordingly.

(3) A person whose suspension as a notary has been removed or who has been reinstated as a notary may practise as a notary if -

(a) the security furnished by him under this Act is still good enough security for the purposes of this Act;

(b) he holds a licence under the written law requiring him to have a licence before providing legal services as a notary; and

(c) he has complied with any condition imposed by the Supreme Court under subsection (1).

(4) The decision of the Attorney-General under section 11 with regard to the archives of a person who has been suspended or removed from office as a notary shall, notwithstanding the removal of the suspension, or the reinstatement of the person, as the case may be, continue to apply to the archives of the person.

Official Notary and Assistant Official Notary

13. (1) The President may appoint on such terms and conditions as he thinks fit -

(a) a public officer who qualifies to be appointed as a notary under section 5(1) to be Official Notary; and

(b) a public officer who -

(i) qualifies to be appointed as a notary under section 5 (1);

(ii) is a barrister or attorney-at-law; or

(iii) the President is satisfied has sufficient knowledge of the laws of the Republic to perform the functions of a notary,

to be an Assistant Official Notary.

(2) An Assistant Official Notary shall perform his functions subject to the direction of the Official Notary.

(3) The Official Notary and, subject to subsection (2), an Assistant Official Notary may perform all the functions which a notary may or is by law required to perform under any written

law and, except as provided otherwise, are subject to all prohibitions or restrictions imposed on a notary under this Act or any other written law.

(4) Before taking office the Official Notary and an Assistant Official Notary shall take and subscribe the oaths which a notary is required to take and subscribe under section 9.

Acts which a notary may not perform

14. (1) A notary shall not, while exercising his functions as a notary, directly or indirectly through another -

(a) acquire an interest in any matter in respect of which he gives his services as a notary;

(b) invest in his own name or for his own benefit any sum of money which he may have received for or on behalf of a client;

(c) receive or keep any sum of money in his capacity as a notary on condition that he will pay interest on the sum;

(d) make use at any time or for any period of any sum of money, or of any security which may have been entrusted to him for any purpose whatsoever, other than the purpose for which the sum of money or security was originally entrusted to him;

(e) cause any note or receipt to be signed in blank.

(2) A notary shall not, except with the written permission of the client, keep in his possession for more than 30 days any sum of money entrusted to him by a client.

(3) A notary shall not draw up an act in which his relatives in direct line, whatever may be the degree of relationship, or in the collateral line, up to and including the degree of uncle or nephew, are parties or which contain any provision in their favour.

(4) A notary shall not draw up a deed in the presence of another notary or officiate together with another notary in the same deed if the other notary is his relative in direct line, whatever may be the degree of relationship, or in the collateral line, up to and including the degree of uncle or nephew.

PART III- MANNER OF DRAWING UP AND CONTENT OF DEEDS

Manner of drawing up deeds and content of deeds drawn up by a notary generally

15. Subject to this Act -

(a) a deed may be drawn up before a single notary;

(b) the Schedule shall have effect with regard to the manner of drawing up deeds and the content of deeds drawn up by a notary.

Certain deeds required to be made before a second notary or two witnesses

16. (1) A deed drawn up by a notary containing -

- (a) a donation inter vivos;
- (b) a donation between spouses;
- (c) a revocation of a donation by will;
- (d) an acknowledgment of a natural child;
- (e) a power of attorney to make a donation under paragraph (a) or paragraph (b), a revocation under paragraph (c) or an acknowledgment under paragraph (d),

shall be drawn up in the presence of a second notary or two witnesses but shall, subject to this section, otherwise comply with the Schedule.

(2) A deed referred to in subsection (1) shall state that it has been drawn up in the presence of a second notary or two witnesses.

(3) Where a deed referred to in subsection (1) is drawn up before a second notary anything which is required to be done under this Act before a witness, other than an additional witness in the case where a party cannot sign, shall be done before the second notary.

Restriction regarding deed founded on another deed

17. (1) A notary shall not -

- (a) draw up a deed founded upon a deed -
 - (i) drawn up by another notary;
 - (ii) under private signatures; or
 - (iii) drawn up in a foreign country,
- (b) add to a deed drawn up by him, or received as a deposit, any deed referred to in paragraph (a) (i), (ii) or (iii);
- (c) deliver an extract or authenticated copy of any deed referred to in paragraph (a) (i), (ii) or (iii),

unless the deed referred to in paragraph (a) (i), (ii) or (iii) has been previously, or is simultaneously, stamped with the deed drawn up by him.

(2) Subject to section 28, a notary shall, when receiving a deed as a deposit, enter a note to this effect in his register of summaries.

Special rules as to wills

18. (1) Notwithstanding this Act, Book III Title II of the Civil Code shall continue to apply to wills.

(2) Where circumstances do not allow a second original of a will to be drawn up at once, the notary shall, in place of the second original, draw up an authenticated copy of the will and deposit it with the Registrar General, who shall mark it as seen, within 14 days after the death of the testator shall have become known to the notary.

Special requirement with regard to deed of acquittance

19. A notary who draws up a deed of acquittance, whether in whole or in part, of any privileged or mortgaged claim inscribed under the Mortgage and Registration Act shall insert in the deed a clause giving the extent of the amount paid, a discharge of the inscribed privilege or mortgage to the extent of the amount paid, and indicate the date, volume and folio number of the inscribed privilege or mortgage.

Registrar General may refuse to register etc deeds in certain cases

20. Notwithstanding article 2199 of the Civil Code, the Registrar-General shall not register, transcribe, inscribe or stamp a deed which fails to comply with sections 15 to 19.

Deed void in certain circumstances

21. (1) A deed drawn up by a person who is not a notary or by a notary in contravention of section 14(3) or (4) and which is not signed by all the parties to the deed is void, but, where the deed has been signed by all the parties to the deed, it shall have effect as a deed under private signatures.

(2) A deed to which section 16(1) applies and which fails to comply with section 16(1) and (2) is void.

(3) For the purposes of subsection (1), "sign" includes affixing one's thumbprint or the print of any other finger or putting one's mark as provided in paragraph 2(6)(a) of the Schedule.

Notarial deed is authentic document

22. A deed drawn up by a notary in accordance with this Act is an authentic document in terms of the Civil Code.

PART IV - ARCHIVES, COPIES OF DEEDS ETC

Safekeeping of original and authenticated copy of deeds

23. (1) Subject to this Act, a notary shall not,

(a) deliver an authentic deed or authenticated copy of a deed;

(b) give any information to any person other than the person directly interested, his heirs, beneficiaries or executor or a person to whom the court has ordered the notary to do so in respect of a deed, drawn up by the notary or deposited with the notary in accordance with this Act.

(2) Subsection (1)(a) shall not apply to -

(a) a deed relating to dealings in respect of land registered under the Land Registration Act;

(b) a deed relating to land or other property whatsoever situate outside the Republic, provided the notary retains a certified true copy of the deed;

(c) a deed which the court has ordered the notary to deliver to any person named in the order;

(d) a certificate as to persons being alive;

(e) a power of attorney;

(f) an act of notoriety;

(g) a receipt for rent of property;

(h) payment of salaries, wages, pensions or annuities;

(i) a deed of a single form of which by law only one original may be drawn up;

(j) any other deed so exempted under any other written law.

(3) The submission by a notary of an authentic deed or authenticated copy of a deed to the Registrar General for the purpose of registration, stamping or in compliance with any other written law or an order of the Court shall not constitute a contravention of subsection (1),

(4) Where the Court has ordered the delivery of an authentic deed or authenticated copy of a deed to which subsection (1) applies, the notary delivering the deed shall -

(a) draw up a report to this effect;

(b) draw up and sign an exact copy of the deed, which shall be certified as true and correct by a judge, and substitute this copy of the authentic deed or authenticated copy of the deed until the return of the authentic deed or authenticated copy of the deed.

(5) The authentic or authenticated copy of a deed to which this section applies shall, subject to this Act, be kept by the notary at the place and in a manner to the satisfaction of the Attorney-General.

Delivery of copy of deed

24. (1) A notary shall not deliver executory and authenticated copies of a deed unless he holds the original of the deed.

(2) An executory copy shall be in an executory form and shall be headed and closed in the same terms as a judgment of the courts.

Register of Summaries

25. (1) Subject to this Act, a notary shall keep a register containing a summary of all deeds drawn up by him.

(2) The summaries of the deeds in the register referred to in subsection (1) shall be numbered and entered in a chronological order, without any blank space or interlineation.

(3) Each summary shall contain -

- (a) the date and nature of the deed,
- (b) the names and place of residence of each of the parties to the deed;
- (c) a brief description of the transaction embodied in the deed;
- (d) a statement of whether the deed has been registered or stamped or both registered and stamped and if registered or stamped, the date when it was registered or stamped.

(4) A notary shall submit the register of summaries to a judge in chambers or the Registrar of the Supreme Court not more than 15 days between each submission and the first such submission shall be not more than 15 days after the coming into force of this Act and the judge or Registrar shall date and sign the register immediately after the last summary entered.

(5) Without prejudice to subsection (4), a notary shall, upon being required to do so by a judge or the Registrar-General, produce the register of summaries for inspection by the judge or Registrar-General, as the case may be.

Archives of notary to be deposited at Seychelles Archives

26. (1) Subject to this Act, a notary shall not later than the 31st January of each year deposit with the Curator of the Seychelles Archives for safe keeping -

- (a) an original of every deed which is required to be drawn up in double originals under this Act and which has been drawn up by him during the preceding year and registered or stamped at the office of the Registrar-General;
- (b) all original deeds in his possession drawn up during the year which preceded by 20 years the 31st January of the year during which the deposit has to be made together with any register of summaries relating to these deeds which have become

full and a list of the deeds submitted.

(2) The Curator of the Seychelles Archives shall give a receipt to the notary making a deposit under subsection (1).

(3) Notwithstanding the Seychelles Archives Act and subject to subsection (4), the deeds and register deposited under subsection (1) are not open to public inspection.

(4) A deed or register deposited under subsection (1) may be inspected by -

(a) the notary who drew up the deed or kept the register;

(b) the Attorney-General;

(c) the Registrar-General;

(d) a judge;

(e) in the case of a deed, the parties to the deed, his agent or the executor of his estate or any other person authorised by the court.

(5) The Curator of Seychelles Archives shall not deliver a copy of or an extract from any deed or register deposited with him under subsection (1) except to the notary who drew up the deed or kept the register or to any other person named in an order of the Court.

(6) The Curator of the Seychelles Archives may specify the day and time when deeds or registers deposited under subsection (1) may be inspected and may require payment of a fee before delivering any copy or extract under subsection (5).

(7) Subsections (3) and (4) shall not apply where any deed or register deposited under subsection (1) become part of the public archives under the Seychelles Archives Act.

(8) The Registrar-General may, after consultation with the Attorney-General, deposit with the Curator of Seychelles Archives all minutes and other records deposited with the Registrar-General under the now repealed Notaries Act.

Attorney-General may cause archives to be deposited with Seychelles Archives etc

27. (1) The Attorney-General may -

(a) where a notary has resigned or been removed from office, require the notary under section 10(3) or section 11(4) to deposit his archives with the Curator of Seychelles Archives;

(b) where no other arrangement has been made for another notary to take over the archives of a notary who has died or left Seychelles, cause the archives of the notary to be deposited with another notary or the Curator of Seychelles Archives.

(2) Where the archives of a notary is deposited with the Curator of Seychelles Archives

under subsection (1) -

(a) the Attorney-General shall cause a list of deeds and other documents deposited, to be drawn up;

(b) the Curator of Seychelles Archives shall give a receipt therefor;

(c) section 26 shall apply to any deed or register of the notary, except that in the case of a person who has been removed from office as a notary the person shall not be treated as a notary who drew up the deed for the purpose of that section.

(3) Subsection (2)(a) shall not apply where any deeds or the archives of a notary deposited under subsection (1) become part of the public archives under the Seychelles Archives Act.

(4) Where the archives of a notary is deposited with another notary under subsection 1(b) -

(a) the Attorney-General shall cause a list of all deeds or other documents deposited to be drawn up;

(b) the notary with whom the archives is deposited shall -

(i) give a receipt therefor;

(ii) attach a copy of the receipt in his current register of summaries;

(iii) for the purposes of this Act, deal with the archives as if the documents constituting the archives had been drawn up by him except that he is not required to make summaries of the deeds in the archives as provided by section 25.

Handing over of archives of a notary to another notary

28. Where the archives of a notary is handed over to another notary under a scheme under section 10 or section 11 or under section 27(1)(b), the notary taking over the archives shall -

(a) within 7 days after taking possession of the archives, draw up a list of all documents handed over to him;

(b) within 7 days after the drawing up of the list of documents, send a copy of the list to the Attorney-General and attach a copy of the list in his current register of summaries,

(c) for the purposes of this Act, deal with the archives as if the documents constituting the archives had been drawn up by him except that he is not required to make summaries of the deeds in the archives as provided by section 25.

Archives of a notary who has died

29. Immediately upon the death of a notary the archives of a notary shall be put under seal by

the Registrar of the Supreme Court and the archives shall be dealt with as provided under section 27(1)(b).

Executory copy

30. (1) A notary who has drawn up a deed shall, subject to this section -

(a) deliver an executory copy of the deed to each of the parties to the deed;

(b) enter a note to this effect on the original of the deed retained by the notary for his archives.

(2) Subject to subsection (3), a notary shall not deliver any deed or any copy of a deed, drawn up by him which is liable to stamp duty or perform any act in pursuance of the deed, unless the deed has been previously or is simultaneously stamped.

(3) Notwithstanding subsection (2), a notary may deliver a copy of an authentic will to the testator before having it stamped.

(4) Notwithstanding subsection (1), a notary may refuse to deliver any deed or copy of any deed until he has been paid his fees in respect of the deed.

Notary to register etc deeds drawn up by him

31. (1) A notary shall register, transcribe, inscribe or stamp every deed drawn up by him within the time prescribed under any written law.

(2) A notary shall be responsible for the payment of all fees, dues or stamp duties on every deed drawn up and submitted by him to the Registrar General.

Seal

32. A notary shall keep a seal or stamp bearing his name, designation and address of his office and deeds drawn up by the notary shall bear the imprint of the seal or stamp.

Leave of absence

33. A notary desirous of absenting himself from the function of his office for any consecutive period of more than 31 days shall first seek, in writing through the Attorney-General, and obtain leave of absence from the President.

S33 am by s2 of Act 16 of 2020 w.e.f. 8 May 2020

Legalization of deeds

34. A notarial deed shall, where legalization is required for any purpose, be legalized by a judge in Chambers.

Fees

35. (1) The fee for drawing up a deed or for any legal service rendered by a notary shall, subject to section 36, be those prescribed under this Act.

(2) A notary may in addition to the prescribed fees claim all sums advanced by him in respect of the deed and all other necessary disbursements.

(3) Subject to section 36, a notary shall not claim any fee which is in excess of the appropriate prescribed fee.

(4) A notary shall, when required, give a receipt for the amount of fees or other disbursement received by him.

(5) A notary shall, when issuing a receipt under subsection (4), deliver to the person making payment a statement, which may be combined with the receipt, specifying -

(a) the full name and address of the notary;

(b) the full name, address, national identity number, if any, of the person to whom the statement is delivered; and

(c) a short description of the transaction embodied in the deed.

(6) Where any dispute arises concerning the fees or disbursement claimed by a notary the Registrar of the Supreme Court shall tax the fees or disbursement and a party dissatisfied with the taxation may appeal to a judge in chambers whose decision shall be final.

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

(8) A notary shall not sue a person for his fees or costs until the bill of fees or costs have been taxed under subsection (6).

Agreement in respect of fees

36. (1) Notwithstanding section 35, a notary and a client may make an agreement in writing in respect of the amount and manner of payment of the whole or any part of any fees or disbursement for service rendered or to be rendered by a notary and the agreement shall, subject to this section, apply in place of the relevant prescribed fees.

(2) An agreement referred to in subsection (1) shall be dated, signed by the notary and the person liable to pay the amount referred to in the agreement and stamped and the notary shall, within 14 days after the agreement has been stamped, lodge a certified copy of the agreement with the Registrar of the Supreme Court.

(3) The Supreme Court may at any time, of its own motion or on the application of a party to the agreement, review the agreement referred to in subsection (1) and upon such a review the court may confirm the agreement or vary any part of it as it thinks fit and its decision shall be final.

(4) An agreement confirmed or varied under subsection (3) shall apply in place of the relevant prescribed fees.

Offences

37. (1) A person who is not a notary who -

(a) holds himself out or represents himself to be, or uses such term in describing himself so as to suggest that he is or is qualified to act as, a notary;

(b) for or in expectation of any fee or reward draws up or prepares any notarial deed or performs any act within the exclusive jurisdiction of a notary,

is guilty of an offence and liable to a fine of R.25,000 and to imprisonment for 5 years.

(2) A person -

(a) who makes or causes to be made any false representation in respect of any entry in the roll of notaries;

(b) who makes any false declaration or representation for the purpose of obtaining an appointment as a notary,

is guilty of an offence and liable to a fine of R.25,000 and to imprisonment for 5 years.

(3) A notary who during the time he has been suspended from office draws up or prepares any notarial deed or provides any other legal services as a notary is guilty of an offence and liable to a fine of R.25,000 and to imprisonment for 5 years.

(4) Subject to subsection (5), a notary who contravenes this Act is, without prejudice to any action against him under section 11 or to any claim in a civil suit by a party prejudiced, guilty of an offence and liable to a fine of R.25,000 and to imprisonment for 5 years.

(5) A notary who fails to submit his register of summaries in accordance with section 25(4) or deposit his archives with the Curator of the Seychelles Archives in accordance with section 26 is liable to a fine of R.5,000 and if the default continues thereafter to a further fine of R.10 for every day that the default continues;

(6) A person who fails to comply with a scheme, as approved by the Attorney-General under section 10 or section 11, relating to the handing over or disposal of the archives to which the scheme applies is guilty of an offence and liable to a fine of R.25,000 and to imprisonment for 5 years.

Regulations, Rules

38. (1) The Minister may make regulations for carrying into effect the purposes and provisions of this Act and, without restricting the generality of the foregoing, may -

(a) prescribe any matter required or necessary to be prescribed relating to a person

who wishes to serve as clerk to a notary;

(b) prescribe the qualifications for a person to be admitted to sit for, the subjects for, the mode of conducting, the fees for and any matter relating to any examination under this Act;

(c) prescribe the fees payable for any service provided by a notary.

(2) The Minister may by regulations amend the Schedule.

(3) The Chief Justice may make rules of the Court in respect of any matter under this Act where rules are necessary or convenient to be made.

Repeal of Cap 85

39. (1) Subject to subsection (2), the Notaries Act is repealed.

(2) Notwithstanding the repeal in subsection (1) -

(a) a person who was Official Notary, an Assistant Official Notary or a notary under the now repealed Notaries Act at the time of the coming into force of this Act shall be deemed to have been so appointed under this Act and, in the case of a notary, shall submit his prescribed particulars within 30 days of the coming into force of this Act to the Registrar of Supreme Court who shall enter the particulars in the roll of notaries,

(b) a notarial deed drawn up by a notary before the coming into force of this Act which was drawn up in accordance with the repealed Notaries Act shall be deemed to have been drawn up in accordance with this Act.

SCHEDULE - MANNER OF DRAWING UP AND CONTENT OF DEEDS

(section 16)

1.(1) Subject to this Act and any other written law, every deed drawn up by a notary shall contain -

(a) the full name and address of the place of business of the notary drawing up the deed;

(b) the full names, national identity number or, where a party is not a Seychellois or resident in Seychelles, the nationality and the number, place and year of issue of the passport or other document of identity, and the address of the place of residence of every party and witness to the deed;

(c) the subject matter of every transaction embodied in the deed;

(d) where the deed is in respect of immovable property, the parcel number or, where

the property has not been surveyed, a full description of, the immovable property;

(e) where a deed is in respect of a transfer of any property, thing or right whatsoever for a consideration -

(i) a clause to the effect that the parties declare to the best of their knowledge and belief that the purchase price or consideration represents the actual price and real value of the property, thing or right transferred or that the actual price and real value of the property, thing or right for the purposes of the Stamp Duty Act is estimated at the sum specified in the clause;

(ii) a clause stating that the notary has warned the parties to the deed of the consequences to which they expose themselves if the full purchase price, consideration or conditions giving rise to stamp duty under the Stamp Duty Act, is not truly expressed.

(2) Notwithstanding paragraph (1)(b), the requirement relating to the national identity number or the particulars of the passport or document of identity of a party to a deed shall not apply where, at the time when the notary drew up the deed, the notary reasonably believed that the party was at the point of death (in articulo mortis) and it was not reasonably practicable for the notary to obtain the national identity number or particulars of the passport or document of identity.

(3) Where subparagraph (2) applies, the notary drawing up the deed shall insert a declaration to this effect in the deed.

(4) A notary shall satisfy himself as to the identity of each party to a deed drawn up by him

(5) A person shall not be a witness to a deed drawn up by a notary -

(a) if he is a party to the deed;

(b) if he is -

(i) a relative in direct line, whatever may be the degree of relationship, or in the collateral line up to and including the degree of uncle or nephew to;

(ii) a clerk or servant of,

the notary or a party to the deed;

(c) unless -

(i) he is of age;

(ii) he can sign his name;

(iii) he is resident in Seychelles;

(iv) he is personally known to the notary or has satisfied the notary as to his identity.

2.(1) Subject to this Act and to any other written law, a deed drawn up by a notary shall -

- (a) be drawn up so as to constitute a single document, without blank, gap or interval which interrupts the flow of the content of the deed;
- (b) not contain abbreviation;
- (c) not contain a word written over another word or interlineation or addition in the body of the deed;
- (d) be legibly written, printed or typewritten in indelible ink;
- (e) record in words the date, sum of moneys or measurements;
- (f) be drawn up in double originals.

(2) Where a word in a deed drawn up by a notary has to be deleted, it shall be deleted in such a manner as to remain legible and allow the number of words deleted to be recorded as a marginal note to the page on which the deletion has been made or at the end of the deed.

(3) Where addition has to be made to the body of a deed it shall be written in the margin on the page on which the addition has to be made or, where the length of the addition renders it necessary, at the end of the deed.

(4) Before a party or witness subscribes to a deed drawn up by a notary the notary shall -

- (a) ascertain that any witness to the deed is not disqualified under this Act;
- (b) read out the deed to the party in the presence of the witnesses, if any;
- (c) ascertain whether each party and witness, if any, understand sufficiently the language in which the deed is drawn up to understand the contents of the deed and, if a party or witness does not so understand, explain the content of the deed to that person in a language which that person understands.

(5) The parties and witnesses, if any, to a deed drawn up by a notary and the notary who drew up the deed shall -

- (a) initial or sign every marginal note, other than a marginal note at the end of the deed, under subparagraph (2) and every addition, other than an addition inserted at the end of the deed, under subparagraph (3);
- (b) sign and approve every marginal note at the end of the deed under subparagraph (2) and every addition inserted at the end of the deed under subparagraph (3);
- (c) sign the deed.

(6) Subject to any other written law, where a party to a deed drawn up by a notary cannot sign by reason of illiteracy or any physical incapacity -

(a) the party shall affix his thumbprint or, where he does not have a thumb, he shall affix the print of any other finger or put his mark, to the deed in the presence of two additional witnesses qualified under this Act;

(b) the notary who drew up the deed shall record -

(i) the fact and reason of the inability of the party to sign;

(ii) where the party does not have a thumb and has affixed the print of any other finger, the print of which particular finger was affixed under subparagraph (a);

(iii) the fact that the party affixed his print or put his mark to the deed in accordance with subparagraph (a) in his presence after the notary has complied with paragraph (4) in the presence of every witness to the deed.

(7) Where a party to a deed drawn up by a notary is represented by an agent and proxy, the notary shall -

(a) before subscribing the deed personally verify that the power of attorney empowers the agent and proxy to represent his principal in respect of the transaction witnessed by the deed;

(b) specify in the deed all the particulars of the agent and proxy which are required to be specified in respect of a party under paragraph 1;

(c) record in the deed the fact that he has complied with sub-subparagraph (a)

LAWS OF SEYCHELLES

CHAPTER 149

NOTARIES ACT

SUBSIDIARY LEGISLATION: NOTARIES (FEES AND COSTS) REGULATIONS

[20th June 1995]

S.I. 70 of 1995

1. These rules may be cited as the Notaries (Fees and Costs) Regulations.
2. The fees and costs chargeable or recoverable by notaries for work done by them and the matters which may be taken into consideration on the taxation of notaries' bills of costs shall be as set

out in the Schedule.

SCHEDULE

(reg 2)

Part I – SCALE OF FEES

		Rupees
1.	Act of deposit of documents	400
2.	Certificate of a person being alive	300
3.	Act of notoriety	300
4.	Consent to marriage	300
5.	Acknowledgement of natural children, although made by the same instrument, for the first child	500
6.	For all the others	100
7.	General power of attorney	500
8.	Special power of attorney	400
9.	Substitution of power of attorney	400
10.	Revocation of power of attorney	400
11.	Acknowledgment of handwriting (reconnaissance d'écriture)	300
12.	Declaration and acknowledgment to prevent prescription or the law of limitation of action from taking place	300
13.	Reconveyances, cancellations, not subject to proportional duty	300
14.	Acceptance of transfer when not contained in deed of cession or assignment	300
15.	Establishing title (établissement de propriété) when not designated in the deed to which it refers	400

16.	Redemption of property in virtue of the power of redemption exercised within the time limit	500
17.	Any promise of sale, lease, transfer, exchange or granting of mortgage	500
18.	An acceptance of donation	200
19.	Mutual donation between husband and wife to the survivor of property not inventoried or valued	500
20.	Acquittance or release not arising from a loan	300
21.	Acquittance or release arising from a loan not secured by mortgage – Same charges as in item 47	
22.	Memorandum for inscription or renewal of inscription of mortgage including attendances at the Registration Office: for each inscription	500
23.	Taking additional mortgage security (supplement d'hypothèque)	500
24.	Erasure of an inscription of mortgage	500
25.	Deed of prolonging date of payment	500
26.	Act of agreement for capitalizing interest	200
27.	Act of cession of priority of mortgage	200
28.	Desistment of privilege and mortgage	200
29.	Protest in commercial matters	200
30.	Endorsement to a bill of exchange or promissory note	100
31.	Bill of exchange, for the first	100
32.	Every other	75
33.	Removing an opposition	100
34.	Transfer of government securities, Seychellois or foreign	200
35.	Bill of lading for the first original	100
36.	Each copy	50

37.	For ship protest according to length and importance, From R.500 to R.5000	
38.	For average bonds according to the number of signatures to be obtained and according to the fact whether there is money to collect or not, from R.500 to R.5000	
39.	Written memorandum of parties appearing or not appearing and default	100
40.	Drawing up memorandum or written statement of attendances at inventories, partitions of property, sales by auction, etc.	200
	as regard inventories, the charge for “droit de role” shall be allowed in addition as for office copies.	
41.	Drawing up in authentic will – From R.100 to R.5000 according to the work involved and having regard to the circumstances listed in paragraph 8 of Part II.	
42.	Consent to the execution of a will	500
43.	Revocation of will	500
44.	Additional fee when a deed exempted from such formality is drawn up by the notary in double minute	100
45.	Ratification of any deed or instrument	200
46.	Company formations and deeds of partnership (actes de société) – From R.1000 to R.5000 according to the work involved and having regard to the circumstances listed in paragraph 8 of Part II.	
47.	Agreements not elsewhere specified in this Schedule- From R.100 to R.5000 according to the work involved and having regard to the circumstances listed in paragraph 73.	
48.	Attendance of notary when his presence is required outside his office, for each day or party thereof in addition to his other fees	500
49.	Attendance at inventories, sales in the notary’s office and elsewhere, and to deliver up effects sold-	
	For the first 2 hours	200

	Each subsequent hour	100
50.	Personal attendance of the notary before a court, Judge in Chambers or the Registrar, when required (in addition to any other fee) per hour Not to exceed R.1000	500
51.	Transfer (including exchange) of any property or of any rights therein where no fee is elsewhere specified-	
	Up to R.25,000 consideration	500
	Above R.25,000,	additional 2% on surplus
52.	Transfer of hereditary rights-	
	Up to R.5,000 consideration	1000
	Above R.5,000,	additional ½ % on surplus
53.	Leases-	
	10% on one year's rent or if the lease is for a term certain of less than 12 months on the amount of the rent payable under the lease, subject to a minimum charge of	500
	In addition to the foregoing charges, on payment of a premium and any consideration which is equivalent thereto-	
	5% on the first R.15,000	
	2½ on the residue	
54.	Partitions-	
	Minimum charge	1000
	2% on first R.20,000 of gross creditor mass	
	Above R.20,000 to R.100,000,	additional 1% on surplus
	Above R.100,000,	additional ½ % on surplus
55.	Loans secure by mortgage –	
	Up to R.25,000	500
	Above R.25,000	additional 2% on surplus

56.	Acquittance or release with substitution, cession, delegation or assignment of debt secured by mortgage - Same charges as in item 55.	
57.	Any other acquittance or release arising from a loan secured by mortgage- Half the charges in item 55,	
58.	Donation of any property-	
	Minimum to R.2,000	1000
	Above R.2,000,	additional ½ % on surplus
59.	Sale by auction of immovable property and of rights therein-	
	Same charges as in item 51 and in addition a fee of up to R.1,000 according to the work involved in preparing the cahier des charges and all other formalities consequent upon a sale by auction.	
60.	Sale by auction of movable property-	
	3% on gross amount of sale exclusive of fees chargeable for drawing minutes, statements, copies, notices of sale and for consignment of the proceeds.	
61.	Taking instructions to draw deed, half the fee chargeable for drawing deed subject to a maximum of	200
62.	Attendances at Registration Office: for each attendance	100
63.	Search fee	75
64.	For all office copies or extracts of deeds or other documents held by a notary – for every thirty line or part thereof	105
65.	Engrossed copy of an act with writ of execution- Same charges as in item 64 and in addition a fee of	150

Part II – MISCELLANEOUS

66. The foregoing charges shall include all necessary annexures and one authenticated copy of the act and annexures, but shall not include fees for negotiating a transaction or stamp duty and registration dues which may be charged in addition thereto.

67. Whenever any deed or instrument shall contain any stipulation other than and independent of, and not being the natural consequence of the principal deed, becoming thereby liable at the Registration Office to the proportional duty provided in the Stamp Duty Act the notary shall be

entitled to charge the fee given in this Schedule for every such stipulation or covenant contained therein.

68. When a notary shall have drawn up any act or deed at the request of parties who, for some reason for which the notary cannot be held responsible, do not sign the same, the notary shall be allowed half the fees he would have been entitled to had it been signed.

69. Whenever the notary has been called from his office for drawing up any act or deed which, from circumstances since occurring, may no longer be required, he shall be entitled to claim from the party having required his assistance, for his attendance and absence from his office, exclusive of travelling expenses and disbursements, the sum of R.500 for the first 2 hours or part thereof and R.100 for every additional hour, with a maximum per day of R.1000.

70. In addition to fees for work done, a notary shall be entitled to claim any sums payable in discharge of a liability properly incurred by the notary on behalf of his client, including all sums advanced for stamp duty, registration dues and other necessary disbursements and travelling and other expenses.

71. In respect of any work for which fees are not prescribed in this Schedule or otherwise by law, regard shall be had in fixing or allowing an appropriate charge to any fee prescribed in this Schedule or otherwise by law (including fees prescribed in this Schedule or otherwise by law (including fees prescribed on taxation as between an attorney-at-law and his client) in so far as the work and responsibility involved can be reasonably compared with the work and responsibility involved in the work actually performed.

72. In respect of any other work performed by a notary (such as acting as mandator ad negotia) for which fees are not prescribed in this Schedule or otherwise by law, such sum shall be fixed or allowed as may be fair and reasonable having regard to all the circumstances of the case, the fees prescribed for work of a general nature elsewhere in this Schedule, or in taxation as between an attorney-at-law and his client and the other provisions of this Schedule.

73. Upon taxation of any fees and expenses as between a notary and his client, the Registrar of the Supreme Court shall, in exercising any discretion under this Schedule or otherwise vested in him, have regard to all relevant circumstances and in particular to-

(a) the complexity of the item or of the matter in which it arises and the difficulty or novelty of the questions involved;

(b) the skill, specialised knowledge and responsibility required of, and the time and labour expended by, the notary;

(c) the number and importance of the documents (however brief) prepared or perused;

(d) the place and circumstances in which the business involved is transacted;

(e) the importance of the matter to the client;

(f) where money or property is involved, its amount or value;

(g) in the case of fees chargeable for negotiating a transaction, the complexity of the subject matter of the negotiation and the duration of the regulation;

(h) any other fees and allowances payable to the notary in respect of other items in the same matter, but only where work done in relation to those items has reduced the work which would otherwise have been necessary in relation to the item in question.
