

# **The Notaries Act-1952**

## **Introduction**

The Government of India have the power to appoint Notaries Public, but only for the limited purpose of performing functions under the Negotiable Instrument Act, 1881[vide section 138, Negotiable Instrument Act, 1881]. The Notaries Act, 1952 (Act No.53 of 1952) was enacted to empower the Central and State Governments to appoint Notaries not only for the limited purpose and to regulate the profession of such Notaries. It came into force on 14-8-1956.

In Rule 4, sub-rule 2 (A) is inserted for appointment as Notary as prescribed in Form II. In Rule 6 sub-rule (1) has been substituted to examine every application of Notary by competent authority. If the competent authority is not satisfied with the application as prescribed in Rule 3 regarding Qualification or that any previous application, the competent authority shall reject the application.

The other important is that sub-rule (1) of Rule 7 is substituted .The competent authority shall after holding such inquiry after giving the applicant an opportunity of making his representation against the objection, if any received within the time prescribed, make a report to the appropriate Government, recommending to appear before the Interview Board. For this purpose Rule 7(A) is inserted to constitute the Interview Board.

The relevant Sections in the Statutes are given as Appendix for the Benefit of readers viz., Negotiable Instrument Act(1881), Indian Evidence Act, 1872, Power of Attorney Act, 1882, The Oaths Act, 1969.

(A clear understanding of the Act is therefore necessary for all those who are to deal with the Act. An effort has been made to interpret the provision of the Act in a simple style. Section wide commentary/Note wherever necessary has been added in this edition Keeping in mind the requirement of Lawyers in general and Notaries in particular .The importance of the Book will be put to test by those who are in need to use it).

# The Notaries Act, 1952

[Act No.53 of 1952]

An Act to regulate the profession of notaries.

(BE it enacted by Parliament as follows:)

## STATEMENT OF OBJECTS AND REASONS

The object of the present Act is to empower the Central and State Government to appoint notaries, not only for the limited purpose of the Negotiable Instrument Act, but generally for all recognised notarial purposes, and to regulate the profession of such notaries.

(A Bill on the subject was accordingly introduced in the provisional parliament on the 19TH April, 1951 and referred to a Select Committee on the 18<sup>th</sup> August, 1951. The report of the Select Committee was presented on the 4<sup>th</sup> October, 1951, but the Bill could not be proceeded with in the last Session of Parliament for want of time and, therefore, lapsed. A part from one or two minor drafting changes, the present Bill follows closely the Notaries Bill, 1951, and amended by the Select Committee.)

**1. Short title, extent and commencement.**-(1) This Act may be called the Notaries Act, 1952.

(2) It extends to the whole of India <sup>2</sup>[\*\*\*].

(3) It shall come into force on such date<sup>3</sup> as the Central Government may, by notification in the Official Gazette, appoint.

**2. Definitions.**- In this Act, unless the context otherwise requires,-

(b) "instrument" includes every document by which any right or liability is, or purports to be, created, transferred, modified, limited, extended, suspended, extinguished or recorded;

<sup>5</sup>[(c) "legal practitioner" means an advocate entered in any roll under the Provisions of the Advocates Act, 1961 (25 1961);]

(d) "Notary" means a person appointed as such under this Act:

Provided that for a period of two years from the commencement of this Act it shall include also a person who, before such commencement was appointed a notary public <sup>6</sup>[under] the Negotiable Instruments Act, 1881 {XXVI of 1881},

<sup>7</sup>[\*\*\*] and is, immediately before such commencement, in practice in <sup>8</sup>[any part of India:

Provided further that in relation to the State of Jammu and Kashmir the said period of two years shall be commuted from the date on which this Act comes into force in that State];

- (e) "prescribed" means prescribed by rules made under this Act;
- (f) "Register" means a Register of Notaries maintained by Government under Section 4;
- (g) "State Government" in relation to a Union territory means the administrator thereof.

**3. Power to appoint notaries.-** The Central Government, for the whole or any part of India, and any State Government, for the whole or any part of the State, may appoint as notaries any legal practitioners or other persons who possess such qualifications as may be prescribed.

**(Appointment :** The Central Government for the whole and any part of India and that the State Government ,for the whole or any part of the State may appoint as Notaries as prescribed in Rule 3.

**4.Registers.-**(1) The Central Government and every State Government shall maintain, in such form as may be prescribed, a Register of the notaries appointed by that Government and entitled to practice as such under this Act.

(2) Every such Register shall include the following particulars about the notary whose name is entered therein, namely.

- (a) his full name, date of birth, residential and professional address;
- (b) the date on which his name is entered in the Register.
- (c) his qualifications; and
- (d) any other particulars which may be prescribed.

**5.Entry of names in the Register and issue or renewal of certificates of practice.-** (1) Every notary who intends to practice as such <sup>1</sup>[may], on payment to the Government appointing him of the prescribed fee, if any, be entitled -

(a) to have his name entered in the Register maintained by that Government under section 4; and

(b) to a certificate authorizing him to practice for a period of <sup>2</sup>[five years] from the date on which the certificate is issued to him.

<sup>3</sup>[(2) The Government appointing the notary, may, on receipt of an application and the prescribed fee, renew the certificate of practice of any notary for a period of five years at a time.]

**6. Annual publication of lists of notaries.-** The Central Government and every State Government shall, during the month of January each year, publish in the Official Gazette a list of notaries appointed by that Government and in practice at the beginning of that year together with such details pertaining to them as may be prescribed.

**7. Seal of notaries.-** Every notary shall have and use, as occasion may arise, a seal of such form and design as may be prescribed.

**8. Functions of notaries.-** (1) A notary may do all or any of the following acts by virtue of his office, namely:-

- (a) verify, authenticate, certify or attest the execution of any instrument;
- (b) present any promissory note, *hundi* or bill of exchange for acceptance or payment or demand better security;
- (c) note or protest the dishonour by non-acceptance or non-payment of any promissory note, *hundi* or bill of exchange or protest for better security or prepare acts of honour under the Negotiable Instruments Act, 1881 (XXVI of 1881), or serve notice of such note or protest;
- (d) note and draw up ship's protest, boat's protest or protest relating to demurrage and other commercial matters;
- (e) administer oath to, or take affidavit from, any person;
- (f) prepare bottomry and responantia bonds, charter parties and other mercantile documents;
- (g) prepare, attest or authenticate any instrument intended to take effect in any country or place outside India in such form and language as may conform to the law of the place where such deed is entitled to operate;
- (h) translate, and verify the translation of, any document, from one language into another;
- <sup>1</sup>[(ha) act as a Commissioner to record evidence in any civil or criminal trial if so directed by any court or authority;]
- <sup>1</sup>[(hb) act as an arbitrator, mediator or conciliator, if so required;]
- (i) any other act which may be prescribed.

**Verify:** It means confirmation of correctness or authenticity or statement of a party.

**Authentication:** It is attestation made by a proper officer by which he certifies that a record is due Form of Law and that the person who certifies it is the officer appointed so to do so.

**Certify:** To authenticate or verify in writing , to attest as being true or as meeting certain

**Attest:** To bear witness to ; to affirm the truth or genuineness

**Affidavit:** If the affidavit is sworn by a Notary duly verified, there is no infirmity .Attestation of false affidavit of impersonators by Notary libel for prosecution.

**9. Bar of practice without certificate.-** (1) Subject to the provisions of this section, no person shall practice as a notary or do any notarial act under the official seal of a notary unless he holds a certificate of practice in force issued to him under section 5:

Provided that nothing in this sub-section shall apply to the presentation of any promissory note, *hundi* or bill of exchange for acceptance or payment by the clerk of a notary acting on behalf of such notary.

(2) Nothing contained in sub-section (1) shall, until the expiry of two years from the commencement of this Act, apply to any such person as is referred to in the proviso to clause (d) of section 2:

**10. Removal of names from Register:-** The Government appointing any notary may, by order, remove from the register maintained by it under section 4 the name of the notary if he-

- (a) makes a request to that effect; or
- (b) has not paid any prescribed fee required to be paid by him; or
- (c) is an undischarged insolvent; or
- (d) has been found, upon inquiry in the prescribed manner, to be guilty of such professional or other misconduct as, in the opinion of the Government, renders him unfit to practice as a notary; <sup>2</sup>[or
- <sup>2</sup>[(e) is convicted by any court for an offence involving moral turpitude; or]
- <sup>2</sup>[(f) does not get his certificate of practice renewed.]

**11. Construction of references to notaries public in other law.-** Any reference to a notary public in any other law shall be construed as a reference to a notary entitled to practice under this Act.

**12. Penalty for falsely representing to be a notary, etc –** Any person who:

- (a) Falsely represents that he is a notary without being appointed as such or
- (b) Practices as a notary or does any notarial act in contravention of Section 9, shall be punishable with imprisonment for a term which may extend to (One Year), or with fine, or with both.

**13. Cognizance of offence.-** (1) No court shall take cognizance of any offence committed by a notary in the exercise or purported exercise of his functions under this Act save upon complaint in writing made by an officer authorized by the Central Government or a State Government by general or special order in this behalf.

(2) No magistrate other than a presidency magistrate or a magistrate of the first class shall try an offence punishable under this Act.

**14. Reciprocal arrangements for recognition of notarial acts done by foreign notaries.-** If the Central Government is satisfied that by the law or practice of any country or place outside India, the notarial acts done by notaries within India are recognized for all or any limited purposes in that country or place, the Central Government may, by notification in the Official Gazette, declare that the notarial acts lawfully done by notaries within such country or place shall be recognized with India for all purposes or, as the case may be, for such limited purposes as may be specified in the notification.

**15. Power to make rules.-** (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

- (a) The qualifications of a notary, the form and manner in which applications for appointment as a notary may be made and the disposal of such applications;
- (b) The certificates, testimonials or proofs as to character, integrity, ability and competence which any person applying for appointment as a notary may be required to furnish;
- <sup>1</sup>[(c) The fees payable for appointment as a notary and for the issue and renewal of a certificate of practice, area of practice or enlargement of area of practice and exemption whether wholly or in part, from such fees in specified classes of cases;]
- (d) The fees payable to a notary for doing any notarial act;
- (e) the form of Registers and the particulars to be entered therein;
- (f) the form and design of the seal of a notary;
- (g) the manner in which inquiries into allegations of professional or other misconduct of notaries may be made;
- (h) the acts which a notary may do in addition to those specified in section 8 and the manner in which a notary may perform his functions;

(i) Any other matter which has to be or may be, prescribed.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.