

**Amendment to section 138 of the  
Negotiable Instruments Act, 1881**

**Report No.123**

## **AMENDMENT TO SECTION 138 OF THE NEGOTIABLE INSTRUMENTS ACT, 1881**

The Negotiable Instruments Act, 1881 is a Federal Statute which was enacted to define and amend the law relating to promissory notes, bills of exchange and cheques. Section 3 of the said Act is an interpretation clause which is reproduced below:-

- (a) “accommodation party” means a person who has signed a negotiable instrument as a marker, drawer acceptor or endorser without receiving the value thereof and for the purpose of lending his name to some other person;
- (b) “banker” means a person transacting the business of accepting, for the purpose of lending or investment, of or deposits of money from the public, repayable on demand otherwise withdrawable by cheque, draft, order, or otherwise, and includes any Post Office Savings Bank;
- (c) “bearer” means a person who by negotiable comes into possession of a negotiable instrument, which is payable to bearer;
- (d) “delivery” means transfer of possession actual or constructive, from one person to another;
- (e) “issue” means the first delivery of a promissory notice, bill of exchange or cheque complete in form to a person who takes it as holder;
- (f) “material alteration” in relation to a Promissory note, bill, of exchange or cheque includes an alteration of the date, the sum payable, the time of payment, the of payment, and, where any such instrument has been accepted generally, the addition of a place of payment without the acceptor’s assent, and
- (g) “notary public” includes any person appointed by the Central Government to perform the functions of notary

public under this Act and a notary appointed under the Notaries Ordinance, 1961.

Section 3(g) of the Negotiable Instruments Act, 1881 defines Notary Public whereby section 138 of the Act empowers the Federal Government to appoint notaries public. Section 138 of the said Act is reproduced below:-

**Section 138.-Powers to appoint notaries public:-**

The Federal Government may, from time to time, by notification in the Official Gazette, appoint any person, by name or by virtue of his office, to be a Notary Public under this Act and to exercise his functions as such within any local area, and may, by like notification, remove from office any Notary Public appointed under this Act.

The qualification for appointment as a notary is laid down in rule 3 of the Notaries Rules, 1965, which is reproduced below:-

**Rule 3.- Qualification for Appointment as a Notary.**

No person shall be eligible for appointment as a notary unless on the date of the application for such appointment.

- (a) He is a notary public appointed by the Master of Faculties in England; or
- (b) He has been practicing as legal practitioner for at least five years.

Rule 3(b) of the Notaries Rules, 1965 mentions that a notary must have at least 5 years law practice but section 138 of the Negotiable Instruments Act, 1881 provides that the Federal Government may appoint any person as Notary Public under the Act. This creates a doubt that any person can be appointed as notary even a person who may not be a law graduate hence it is necessary to amend section 138 of the Negotiable Instrument Act, 1881 by replacement of any person with a legal practitioner having practice for at least five years. Comparative table for amendment in section 138 of the Negotiable Instruments Act, 1881 follows,-

## COMPARATIVE TABLE

Existing provision	Proposed provision
<p><b>Section 138.- Powers to appoint Notaries Public:-</b> The Federal Government may, from time to time, by notification in the official Gazette, appoint <b>any person</b>, by name or by virtue of his office, to be a notary public under this Act and to exercise his functions as such within any local area, and may, by like notification, remove from office any notary public appointed under this Act.</p>	<p><b>Section 138.- Powers to appoint Notaries Public:-</b> The Federal Government may, from time to time, by notification in the official Gazette, appoint <b>legal practitioner having active practice for at least five years</b>, or any person by virtue of his office, to be a notary public under this Act and to exercise his functions as such within any local area, and may, by like notification, remove from office any notary public appointed under this Act</p>

### **Commission’s deliberations on 19 May, 2012**

The Commission proposed to amend section 138 of the Negotiable Instruments Act, 1881 to the extent of qualification of the person to be appointed as a Notary Public as provided in the Notary Rules, 1965. It is approved that expression “**any person**” in section 138 of the Negotiable Instruments Act, 1881 may be replaced with “**legal practitioner having active practice for at least five years**”. The Commission also recommended that clause (a) of Rule 3 of the Notaries Rules, 1965 may be amended suitably by deleting the redundant condition.

Draft Bill for amendment for the law is hereby enclosed.

**A**

**Bill**

*to further amend the Negotiable Instruments Act, 1881  
(Act No. XXVI of 1881)*

WHEREAS it is expedient to further amend the Negotiable Instruments Act, 1881 for the purpose hereinafter appearing.

It is hereby enacted as follows:-

**1. Short title and Commencement.**— (1) This Act may be called the Negotiable Instruments (Amendment) Act, 2012.

(2) It shall come into force at once.

**2. Amendment in Section 138.**— In section 138 of the Negotiable Instruments Act, 1881, after the word “appoint” the words “any person” shall be substituted with the words “legal practitioner having active practice for at least five years”.