

# Notaries Public Manual

## For Advocates and Solicitors

This Manual is intended for the guidance of all notaries public. Questions may arise which are not covered by this Manual, in which event an application may be made to the Board of Commissioners for Oaths and Notaries Public for a ruling. Copies of the Board's rulings will be circulated to all notaries public for their information. Due to time constraints, such rulings may have application to future cases rather than the immediate case out of which the ruling has arisen.



Version as at 6 Jan 2020

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## Background

### 1.1 History

When Singapore was part of Malaysia, notaries public were appointed by the Attorney-General of Malaysia under the Notaries Public Ordinance 1959, and Commissioners for Oaths were appointed by the Lord President of Malaysia by virtue of the Court of Judicature Act 1964. After Independence, notaries public were appointed by virtue of the Notaries Public Act by the Attorney-General of Singapore. The appointment was on an indefinite basis, i.e. for the practising life of the notary.

In 1995, the Notaries Public Act was significantly amended in that the power of appointing a notary public became vested in the Senate of the Singapore Academy of Law (SAL), a statutory body constituted under the Singapore Academy of Law Act (Cap. 294A).

### 1.2 Board of Commissioners for Oaths and Notaries Public

Under section 3(1) of the Notaries Public Act (Cap 208), the SAL “Senate may, from time to time, appoint fit and proper persons to be notaries public for a period not exceeding 12 months.”

The SAL Senate delegated this power of appointment to the Board of Commissioners for Oaths and Notaries Public.<sup>1</sup> The Board of Commissioners for Oaths and Notaries Public (the Board), appoints eligible advocates and solicitors, as Notaries Public, twice a year.

By virtue of rule 11(1) of the Singapore Academy of Law Rules (SAL Rules), the Board of Commissioners for Oaths and Notaries Public comprise:

- (a) a chairperson who is a member of the Senate;
- (b) at least one and not more than 4 other members of the Academy.

By virtue of rule 11(2) of the SAL Rules, the Board shall have the power –

- (a) to appoint and reappoint commissioners for oaths and notaries public and to revoke or suspend existing appointments;

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<sup>1</sup> Singapore Academy of Law Rules (Cap R1), rule 11

- (b) to inquire into complaints against persons alleged to have acted in breach of the conditions of their appointments as commissioners for oaths or notaries public and where appropriate to revoke or suspend their appointments;
- (c) to review the fees payable to commissioners for oaths and notaries public and, if the Board thinks fit, make recommendations to the Senate for amendments to such fees;
- (d) to make recommendations to the appropriate authority for the enactment of new legislation or the amendment of existing legislation in relation to all matters concerning commissioners for oaths and notaries public; and
- (e) to carry out such other duties as may be assigned by the Senate.

By virtue of rule 11(4) of the SAL Rules, for the purpose of conducting inquiries under rule 11(2)(b), the Board may establish its own practice and regulate its own procedure.

### **1.3 Persons Eligible for Appointment**

Under section 76 of the Legal Profession Act (Cap 161), “No solicitor who is a commissioner for oaths or a notary public shall do any act as such commissioner or notary, as the case may be, unless he has in force a practising certificate.”

Under section 3(2) of the Notaries Public Act (Cap 208), no person shall be appointed as a notary public unless he is a practising advocate and solicitor in Singapore and has so practised for not less than 7 years, and under section 3(3) of the Notaries Public Act, the Council of the Law Society of Singapore constituted under the Legal Profession Act (Cap. 161) should be consulted before any appointment is made. Every appointment shall be published in the Gazette.

The Board has however developed internal guidelines for the appointment of notaries public. Notaries public (as at date of appointment) are to:

- have no fewer than 15 years' experience in active legal practice and/or legal service (as the case may be); and
- be at least 40 years old.

The Board will generally apply a quota for the appointment of Notaries Public, depending on the size of the firm in which the applicant practises. The table below provides general guidance in this regard:

1 to 5 lawyers	1 notary
6 to 10 lawyers	2 notaries
11 to 50 lawyers	3 notaries
51 to 80 lawyers	4 notaries
81 to 100 lawyers	5 notaries
101 to 150 lawyers	6 notaries
151 to 200 lawyers	8 notaries
201 to 250 lawyers	10 notaries

## 1.4 Revocation of Appointment

Section 5 of the Notaries Public Act (Cap 208) –

If it appears to the Senate that any person being a notary public –

- (a) has become a bankrupt or has made an arrangement with his creditors;
- (b) has been struck off the roll of advocates and solicitors of Singapore; or
- (c) has been found to be guilty of such professional or other misconduct as, in the opinion of the Senate, renders him unfit to practise as a notary public,

The Senate shall by order revoke the appointment of the person and shall cause the order to be published in the Gazette.

Section 6 of the Notaries Public Act (Cap 208) –

The Senate may, by notification in the Gazette, revoke the appointment of a notary public if the notary public requests that his appointment be revoked.

### **1.5 Exercise of Functions of Notary Public by Unauthorised Persons**

Section 7 of the Notaries Public Act (Cap 208) –

Any person who exercises within Singapore any of the functions of a notary public otherwise than in accordance with the provisions of this Act shall be guilty of an offence and shall be liable on conviction before a District Judge to a fine not exceeding \$10,000.

## Functions and Powers

Section 4 of the Notaries Public Act (Cap 208) expressly provides that every notary public “shall have and may exercise within Singapore all the powers and functions which are ordinarily exercised by notaries public in England”.

See Halsbury's Laws of England Vol 66 (2009) 5th Edition para 1412 as to the meaning of “Notary”:

“A notary public is a legal officer appointed by the Court of Faculties, whose general role it is, amongst other matters, to draw, attest or certify, under an official seal, documents which are intended for use in other jurisdictions.”

*Brooke's Notary* 14th Edition states that the functions of an English notary are generally “not defined by any statute or other instrument; there has never been in England any attempt to codify the precise nature of the notary's office as has been done in the countries of Continental Europe, Latin America and other parts of the world whose legal systems are based on principles derived from Roman law.” The legal justifications governing the functions and powers of a notary public in Ireland, England and Wales are based principally on the law of custom, case law and, to a limited extent, statute law. The statute law includes delegated legislation in the form of statutory instruments. At the heart of the functions and powers of the notary is a concept of recording and authenticating the legal acts of persons, natural and “artificial” - in the sense of a body corporate.

The practical functions of a notary follow those applicable in England, with some variations, and are principally as follows -

- (i) Administering any oath or affirmation in connection with any affidavit or statutory declaration (for use outside Singapore);
- (ii) Taking affidavits and statutory declarations (for use outside Singapore);
- (iii) Protesting Bills of Exchange;
- (iv) Ships' Protests; and
- (v) Witnessing execution of documents for use outside Singapore - viz: Conveyances, Powers of Attorney.

Section 4(2) of the Notaries Public Act (Cap 208) provides that the powers and functions do not include affidavits or statutory declarations which are executed for the purpose of being used in Singapore.

Section 4(3) of the Notaries Public Act (Cap 208) provides that:

Without prejudice to the generality of the powers and functions conferred by subsection (1), a notary public may –

- (a) administer any oath or affirmation in connection with any affidavit or statutory declaration which is executed –
  - (i) for the purpose of confirming or proving the due execution of any document;
  - (ii) by any master or member of the crew of any vessel in respect of any matter concerning the vessel; or
  - (iii) for the purpose of being used in any court or place outside Singapore;
- (b) take or attest any affidavit or statutory declaration referred to in paragraph (a); and
- (c) have and exercise such other powers and functions as may be prescribed.

## **2.1 Notarial Precedents**

For Notarial Precedents, notaries are advised to do the following –

- Refer to *Brooke's Notary* 14th Edition (Sweet & Maxwell);
- Simplify the language using clear and simple English where possible; and
- Check with the persons requesting the notarial services if the document fulfils the requirements of the ultimate destination of the document.

## **2.2 Protesting Bills of Exchange**

Notaries are employed to formally present foreign Bills of Exchange for acceptance or payment and to note and protest Bills in case of dishonour (see *Brooke's Notary* 14th Edition (Sweet & Maxwell) at page 103).

## **2.3 Ships' Protest**

On the arrival of a vessel at her port of discharge, and also at an intermediate port of refuge or distress, it is often the practice for the master to cause an entry or note of protest to be made before a notary public. This formality, known as “entering a note of protest” or simply “noting protest”, is observed when, owing to exceptionally bad weather or some accident at sea, damage has been caused to ship or cargo, and is intended to show that such damage was caused by maritime perils and not by any negligence or misconduct on the part of the master, officers or crew (see *Brooke's Notary* 14th Edition (Sweet & Maxwell) at page 195).

## **2.4 Taking Affidavits and Statutory Declarations**

Under this heading are a notary's right to administer oaths and take affidavits. These affidavits are in the main intended for use in countries where notarial acts are recognised.

Every declaration or affidavit relating to the execution of an instrument or deed intended to take effect abroad must be verified by a Notarial Certificate endorsed on the deed or instrument and duly signed and sealed by the Notary who takes it.

## **2.5 Certified True Copies and Originals**

When certifying true copies, a notary simply has to ensure that the copies are indeed true copies of the original. This is done by a visual comparison of the original documents with the copies.

Where notaries are certifying as originals, documents which are obtained, say, from the Accounting and Corporate Regulatory Authority (ACRA), notaries should only certify as originals, ACRA documents which carry the signature of ACRA Assistant Registrars.

## **2.6 Duty to Exercise Care and Skill**

In the performance of the business entrusted to him a notary public undertakes to use a reasonable amount of skill and ordinary care and diligence, that is, such an amount of skill as is usually employed by persons of ordinary capacity engaged in his profession, and such an amount of care and diligence as persons of common prudence are in the habit of using in their own business affairs. For example, a notary should take great care in verifying the identity and capacity of persons requiring him to issue certificates or instruments for their use or benefit.

## 2.7 Formalities of a Notarial Act

A notarial act can be defined as being –

“An act is an instrument recording the due execution of a deed, contract or other writing, or verifying some fact or thing done. An authentic act is an act executed in accordance with legal requirements and certified by the proper officer. A notarial act is the act of a notary public, authenticated by his signature and official seal, certifying the due execution in his presence of a deed, contract or other writing, or verifying some fact or thing done in his presence or of which the notary has certain knowledge. Thus, any certificate, attestation, note, entry, endorsement, or instrument made, or signed and sealed by a notary public in the execution of the duties of his office is a notarial act.” (see *Brooke’s Book on Notaries* – 14th Edition page 79).

### Notarial Acts in Public Form<sup>2</sup>

It has been said<sup>3</sup> that the essential parts of a notarial act in public form are –

- (a) the title;
- (b) the date and place of execution;
- (c) the names of the notary public, parties and witnesses;
- (d) a statement of the fact of the parties appearing before the notary and of their reason for doing so;
- (e) the document or transaction which is the subject of the act;
- (f) a statement to the effect that the instrument was read to the parties and approved by them;
- (g) signatures of the parties and witnesses;
- (h) signature and seal of the notary public.

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2 Notarial acts in which the notary is not only authenticating the due execution of the instrument but is in fact its author and records the substance of the transaction in accordance with the declarations made to him by the appearing parties.

3 *Brooke’s Book on Notaries* – 14th Edition at page 82.

### **Notarial Acts in Private Form<sup>4</sup>**

The essential requirements in cases involving authentication by notarial certificate of the due execution of a document are the following:-

- (a) The name of the notary;
- (b) A statement that the notary is duly admitted to practise in the place of issue of the certificate;
- (c) The names of the signatories and the capacity in which they have executed the document, whether on their own behalf or in an official or representative capacity;
- (d) A statement authenticating the signatures of the parties and, where appropriate, indicating that evidence has been produced to the notary proving the capacity in which they have executed the document and their authority to do so;
- (e) The place and date of issue of the certificate;
- (f) The signature and seal of the notary.

Every Notarial instrument or act should narrate fully and accurately the whole procedure, of which it is intended to preserve a record and afford the proof (see *Brooke's Book on Notaries* – 14th Edition page 83).

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4 Notarial certificates appended to documents. For example, situations where the notary authenticates the signature or seal of a public agency or official or conformity of a copy to its original.

## Mandatory Authentication of Notarised Documents and Use of the SAL E-Register for Notarisation

With effect from 1 Oct 2019, Notaries Public will need to use the e-Register to issue notarial certificates. All notarial certificates will be processed and generated through the e-Register system; the certificates will be serialised and QR-coded. This will ensure that documents presented to SAL for authentication did originate from a validly appointed notary public and addresses the risk of forgery of the notarial certificate and notary stamp.

The Notaries Public Rules have been amended to implement the changes. It is now mandatory for all documents to be authenticated by SAL. Mandating authentication will ensure that all notarised documents originate from properly-appointed notaries and are in compliance with the Notaries Public Rules. From 1 Oct 2019, a Notarial Certificate must be –

- (a) secured to the document for which the Notarial Certificate is issued, with a ribbon that runs through the Notarial Certificate and the document;
- (b) sealed with a seal that is of the pattern set out in the Second Schedule and is issued by the Academy, and that is affixed on the Notarial Certificate over the ribbon mentioned in sub-paragraph (a) near the ends of that ribbon; and
- (c) authenticated in accordance with the Singapore Academy of Law Rules (Cap 294A, R 1).

With effect from 1 Oct 2019, SAL Secretariat also introduced a new format for the SAL Authentication Certificate, in the form of a sticker affixed on the back page of the notarial certificate; and will carry the digital signature of the SAL officer authenticating the Notarial Certificate. This follows the practice of countries who are parties to the Apostille Convention. Some non-Apostille member countries have also implemented the use of digital signatures for use on their Authentication Certificates.

### 3.1 Verification of Notarised Documents at *legalisation.sal.sg*

A recipient of the notarised document (in the foreign country) will be able to search and verify the authenticity of the notarised and authenticated documents via *legalisation.sal.sg* a search register/portal in the E-Register system. Anyone who has the serial number of the notarial certificate will be able to check the authenticity by using the search.

## **3.2 Register of Documents**

Rule 9 of the Notaries Public Rules (Cap 208, R1)–

Every notary public shall –

- (a) keep a register of documents administered in exercise of his appointment;
- (b) furnish such information as the Secretary may require; and
- (c) make the register available for inspection by the Secretary of the Senate upon request.

One of the key features of the e-Register is that Notaries no longer need to maintain a physical register. The e-Register ensures a complete proper record of all documents notarised through the system. The system also allows you to view past notarization records, search and view the billing summary of invoices done for past authentications as well as void submitted authentications.

## **3.3 Fees**

The fees of notaries carrying out their functions as notaries are regulated by the Notaries Public Rules (Cap 208, R1) – see Part II of the First Schedule to the Notaries Public Rules. Fees for other work such as translation, interpretation and travelling time are not prescribed. It is however suggested that commissioners should charge a reasonable rate for such other work.

## Legalisation of Documents for Use Overseas

The notarisation of a document by the notary public is but one step in the whole chain of authentication towards legalisation of documents for use abroad. Authentication of the signature of the notary public by SAL is also part of the legalisation process. At SAL, an officer appointed by the Senate will verify the authority (stamp of appointment) and signature of the Singapore notary public as stated in Notaries Public Rules and ensure that the notarised document is in compliance with the Notaries Public Rules. Apart from the authentication by SAL, the documents may have to be sent to the Singapore Ministry of Foreign Affairs and/or the Embassy of the foreign country for further verification and legalisation. There are no set rules governing the requirements of different countries where the documents are to be used. Notaries can find out individual requirements from the Embassies when they actually send documents there for legalisation.

### *Chain of Authentication (for Overseas Documents)*

Notarisation by notaries public



Authentication by Singapore Academy of Law



Further verification by Ministry of Foreign Affairs



Legalisation by Embassies/Consulates

#### 4.1 Convention Abolishing the Requirement of Legalisation for Foreign Public Documents

There is an international treaty the Hague Apostille Convention (i.e. the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents 1961) which shortens the chain of authentication.

The Apostille Convention facilitates the circulation of public documents executed in one State party to the Convention and to be produced in another State party to the Convention.<sup>5</sup> It does so by replacing the cumbersome and often costly formalities of a full legalisation process (chain certification) with the mere issuance of an Apostille (also called Apostille Certificate or Certificate). The Convention has also proven to be very useful for States that do not require foreign public documents to be legalised or that do not know the concept of legalisation in their domestic law: the citizens in these States enjoy the benefits of the Convention whenever they intend to produce a domestic public document in another State party which, for its part, requires authentication of the document concerned.

Singapore is not a signatory to the Apostille Convention.

For an in-depth understanding of the responsibilities of notaries public, it is recommended that you read “*Brooke’s Book on Notaries – 14th Edition*”.



<sup>5</sup> The Apostille Convention only applies as between States parties. For a comprehensive and updated list of Contracting States, see the “Updated list of Contracting States (status table)”, which is available on the “Apostille Section” of the Hague Conference website at < [www.hcch.net](http://www.hcch.net) >. Among all Hague Conventions, the Apostille Convention has attracted the highest number of ratifications and accessions with over 100 Contracting States. The Convention is applied millions of times a year.

## Guidelines on Issuance of Notarial Certificate

### 5.1 Introduction

Singapore Academy of Law has implemented various measures to enhance the authentication and the notarisation process. The Notaries Public Rules have been amended to implement the changes. The Notaries Public (Amendment No. 2) Rules 2016 came into operation on 15 February 2017.

With effect from 15 February 2017, it is mandatory for all notaries public to issue a Notarial Certificate for each document attested by the notary public, or in connection with which the notary public has administered an oath or affirmation, in exercise of the notary public’s powers and functions as a notary public.

### 5.2 Certificate Printing and Materials Required for Binding Documents

It is recommended that plain white paper be used for the printing of a Notarial Certificate. Printing must be done on one side only.

All documents notarised by a Notary Public **MUST** be bound by a Red Ribbon in the format shown on pages 18 to 20 in the Step by Step Guide of this manual. The document must be **COMPLETED** with **notary public’s signature, stamp and SAL issued notarial seal**. The notarial seal must not cover the content on the certificate. Notarial Certificates that do not comply with the requirements of SAL will not be accepted.

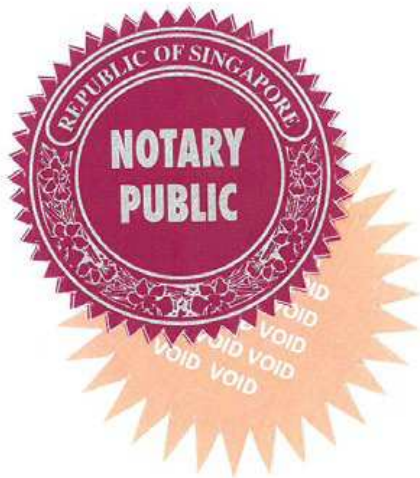
The following materials are required for the use of binding the notarial certificate and the notarised documents:

Description	Specification
Red Satin Ribbon	<ul style="list-style-type: none"> <li>• Width 5mm-8mm</li> <li>• Plain solid colour</li> <li>• No shades of pink/purple/burgundy.</li> <li>• No customisation (eg. notary public name, firm name, logo or design)</li> <li>• No bigger than 8mm in diameter</li> </ul>
Single Hole Puncher	<ul style="list-style-type: none"> <li>• No bigger than 8mm in diameter</li> </ul>

### 5.3 Notarial Seal

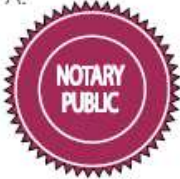


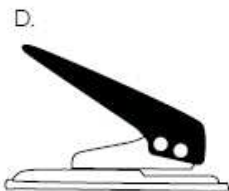
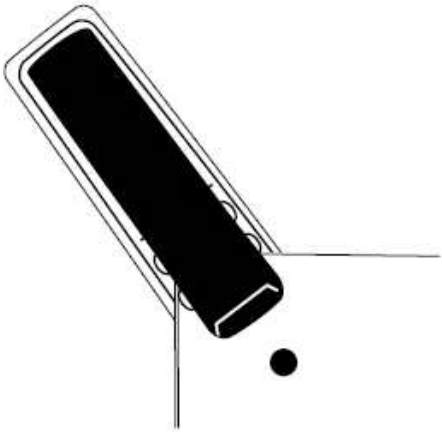
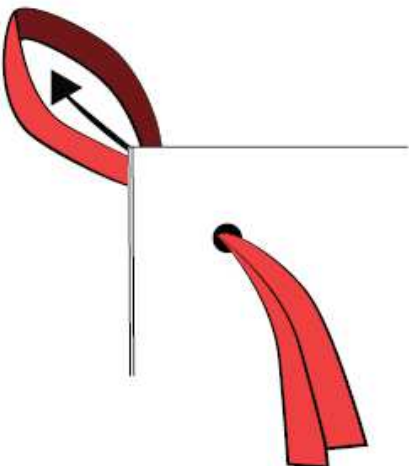
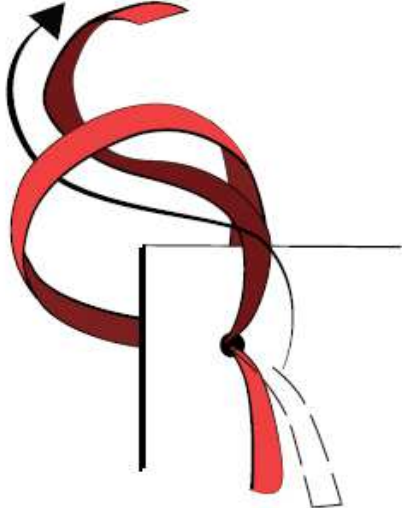
A Notarial Certificate must be secured, to the document for which the Notarial Certificate is issued, with a ribbon that runs through the Notarial Certificate and the document. The Notarial Certificate must be sealed with a seal issued by the Singapore Academy of Law, and that is affixed on the Notarial Certificate over the ribbon near the ends of that ribbon.

A security feature is embedded onto the Singapore Academy of Law issued notarial seals. The picture below explains the features:

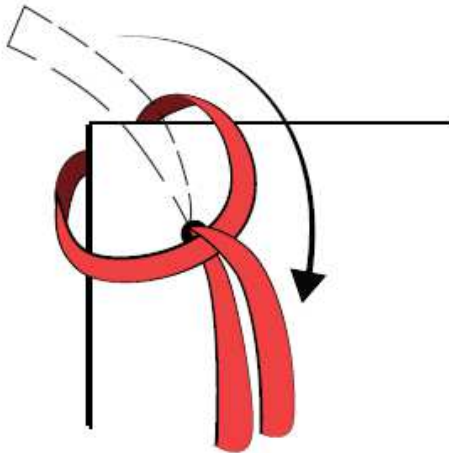


1. Notary Public Seals will not have the Notary Public's name.
2. "VOID" text (security feature) will be visible if any attempt is made to peel off the sticker. Once the sticker displays the "VOID" text, the seal is considered to be invalid.

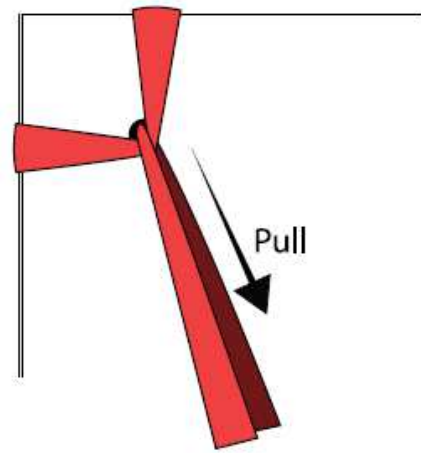
## 5.4 Step by Step Guide

<p><b>1</b> The following materials are required for the use of binding notarial certificate and notarised documents:</p> <p>A.  B.  C.  D. </p> <p>A. Notarial Seal B. Ribbon C. Scissors D. Hole Puncher</p>	<p><b>2</b> Punch a single hole at the <b>top left corner</b> of the notarised document. The hole should not be more than 4cm from the corner of the document.</p> 
<p><b>3</b> Thread the ribbon through the hole.</p> 	<p><b>4</b> Thread one end of the ribbon through the loop.</p> 

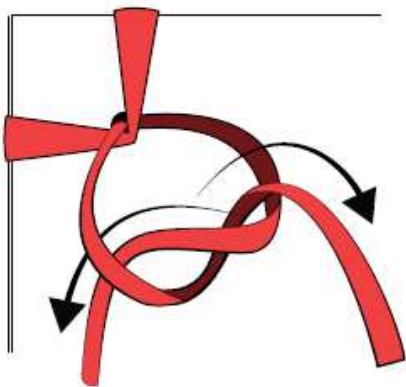
**5** Pull both ends of the ribbons towards yourself.



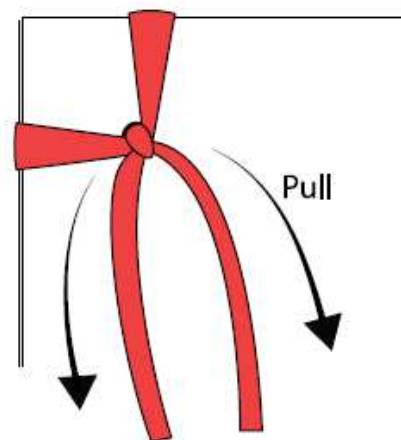
**6** Pull to tighten.



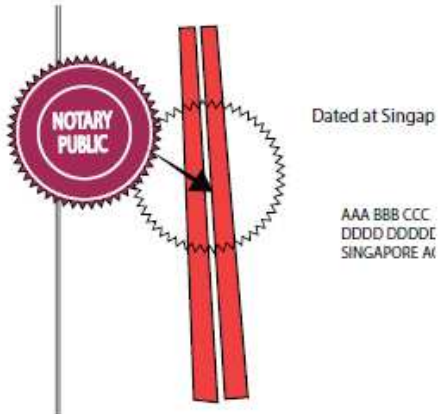
**7** Tie a knot.



**8** Tighten the knot to securely bind the document.



**9** Affix the notarial seal.



**Tip:** Do not cover any content on the certificate.

**10** Trim the edges of the ribbon.

