Some FAQs

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1. **When should I obtain the photographs of parties?**

Notaries Ordinance-S10 of the Amendment

" in the case of a deed of transfer or a deed of gift, or deed of exchange or a will, he shall affix to the original of such deed or instrument passport size certified photographs of the parties, to which the notary has affixed his seal and shall keep copies of such national identity card, passport or driving licence attached to the protocol;";

Therefore, in a **Transfer, Gift, Exchange or in a Will** a passport size certified photographs of the parties are to be affixed. Notary must affix his seal on it.

2. **When should I obtain Finger impressions of the parties/witnesses?**

"... he shall
(iii) cause every executant, holder of power of attorney (thereinafter referred to as the "attorney"), or authorized person of a corporate body, as the case may be, to place his signature and affix left or right thumb impression or any other finger impression or toe impression to each such paper.";

Therefore, every executant shall place his signature and thumb impression to all divided papers.

3. **Who is an "executant"?**

" " executant" means–
(a) in relation to a deed of transfer, the transferor and the transferee;
and
(b) in relation to other deed or instrument the parties to such deed or instrument;"

Therefore, executants includes Transferor and Transferee, Donor and Donee, Lessor and Lessee and so on.

4. **Is Registration of a Power of Attorney Mandatory?**

"*3. (1) (a) Every power of attorney executed in Sri Lanka or any other country shall be registered with the Registrar General."*

Therefore, to become valid, a Power of Attorney must be registered.

5. **How soon a Power of Attorney shall be registered?**

"*(b) Every power of attorney holder (hereinafter referred to as the "attorney") shall submit his power of attorney for registration, if it is executed in Sri Lanka within one month and if it is executed outside Sri Lanka within three months, from the date of execution of the power of attorney"*

Therefore, a Power of Attorney has to be registered within 3 months (if within Sri Lanka) or 6 months (if outside)

6. **What extra precautions should I take at the execution of a Transfer, Gift, Exchange or a Will?**

"(i) he shall obtain from the Registrar of the relevant Land Registry the certified extract of the folio containing the last entry pertaining to such land or immovable property containing the ownership and the registered encumbrances relating to such land or immovable property;"

a. Therefore, the Notary shall not dispense with the search at the Land Registry and he shall obtain the certified extract of the final folio.

" in the case of a deed of transfer or a deed of gift, or deed of exchange or a will, he shall affix to the original of such deed or instrument passport size certified photographs of the parties, to which the notary has affixed his seal and shall keep copies of such national identity card, passport or driving license attached to the protocol;";

b. Therefore, the Notary shall obtain a certified photographs of the parties.

" he shall cause every executant, holder of power of attorney (thereinafter referred to as the "attorney"), or authorized person of a corporate body, as the case may be, to place his signature and affix left or right thumb impression or any other finger impression or toe impression to each such paper.";

c. He shall cause the executant to place his signature and the thumb impression.

7. **I have a Power of Attorney already executed but not registered. How can I register it?**

"(a) every power of attorney executed prior to the date of commencement of this Act which has not been registered under the provisions of section 3 of the principal enactment and which has not been revoked or cancelled on or prior to the date of commencement of this Act, shall, within a period of six months from the date of commencement of this Act, be submitted for registration to the Registrar General;

Therefore it can be registered under the amendment within 6 months.

8. **Identification of Parties-is there a change?**

"He shall not authenticate or attest any deed or instrument unless one of the executants to the deed or instrument or the two attesting witnesses be known to notary or by the identity of the executants to a deed or instrument is established by such notary by inspection of the national identity card, bio-page of the passport or the driving license of such executants;";

As explained, the Notary can examine the national identity card, bio-page of the passport or the driving license of such executants to establish the identity.

9. **Last Wills-signed before 5 witnesses**

Prevention of Frauds Ordinance

"“(2) The testator shall –
(*a*) sign; and
(*b*) affix his left or right thumb impression,
at the foot or end of the will, testament or codicil referred to in subsection (1), before a notary public and two witnesses who shall be present at the same time:

This eliminates the provision where Wills signed before 5 witnesses were made valid.