



Circular

Circular No. 09-06 (CR)

- **The capacity of a signatory acting for and on behalf of a limited company can be ascertained from:**
 - a company search; and/or
 - authorisation documents such as board resolutions.
- **The following steps should be taken by practitioners when preparing a provisional agreement for sale and purchase (PASP)/provisional tenancy agreement (PTA) to be signed by a signatory for and on behalf of a limited company:**
 - **Verify the identity of the signatory and ascribe his name below his signature.**
 - **Append the company chop or write the words “For and on behalf of (name of the company)” at the signature clause.**
 - **Advise clients to make payments to the company by drawing cheques/cashier orders but not to the signatory personally.**
- **Where the signatory is unable to produce proof of authorisation and is not a director of the company, the following steps should be taken:**
 - **Advise clients of the risks involved and of the need to seek legal advice.**
 - **When acting for the purchaser, stakehold the deposit.**

Signing of Provisional Agreement for Sale and Purchase/Provisional Tenancy Agreement by a limited company

An individual who purports to sign a PASP/PTA for and on behalf of a limited company shall only do so with the requisite authority. Failure to verify the proper authority of the signatory may expose the limited company and the other contracting party to risks. The risks would include the limited company’s denying the signatory’s authority to represent the company to deal with the transaction concerned, and the other contracting party may suffer a loss as a result.

Practitioners are reminded that the capacity of a signatory who purports to act for and on behalf of a limited company can be ascertained

from:

- (a) searches of local companies as well as those foreign companies registered under the Companies Ordinance conducted at the Companies Registry showing the number and name(s) of directors of the limited company; and/or
- (b) authorisation documents issued by the limited company, such as board resolutions or powers of attorney.

In preparing the PASP/PTA when a party(ies) is/are (a) limited company(ies), practitioners should take the following steps:

- (a) Verify the identity of the signatory and ascribe his name legibly below his signature.
- (b) Append the chop of the limited company or alternatively, have the following words written against the signature: “For and on behalf of xxx Limited”.

A specimen of the chop or required wording looks as follows:

“ *For and on behalf of*
(xxx LIMITED)”

----- CHAN TAI MAN
Authorised Signature(s)”

- (c) Advise clients to make payments to the company direct, such as by drawing cheques/cashier orders in favour of the company and not to the signatory personally.

If the signatory is unable to produce satisfactory proof of proper authorisation and is not a director of the company at the time of signing the PASP/PTA, the following additional steps should be taken:

- (a) Advise clients of the risks involved and of the need to seek legal advice before proceeding with the transaction.
- (b) If, after having been advised as stated above, the client still insists on signing the PASP/PTA, the practitioner should, when acting for the purchaser/tenant, arrange for the stakeholding of the deposit so as to reduce the risk of loss.

To protect his own interests, it is advisable for the practitioner to properly record the advice given to his clients of the risks involved in signing the PASP/PTA without examining the signatory's authorisation document and of the need to seek legal advice. It is also advisable to obtain a written acknowledgement from his clients acknowledging that they have been so advised in order to avoid future disputes with clients.

Failure of practitioners to comply with the above guidelines in ensuring due execution of a PASP/PTA by a limited company may give rise to possible disciplinary action by the Authority.

July 2009

Holders of Statements of Particulars of Business
 should bring this Circular to the attention of all staff
 engaged in estate agency work