

## **Guidelines on Verification Requirements for Solicitors (“Guidelines”)**

### **I. Purpose**

1. Each application lodged under the Land Titles Ordinance (Cap. 585) (“LTO”) is required to be verified as to certain matters including, amongst others, the identity, capacity and authority of the parties and the due execution of the instrument(s) (if any) supporting the application and for such purpose, a verification certificate is required to be submitted to the Land Registry. The purpose of the Guidelines is to facilitate solicitors in conducting relevant checks for the verification of the identity, capacity and authority of such parties and the due execution of the relevant instrument(s). The Guidelines aim to provide general guidance for solicitors as to reasonable steps which they should consider taking for making the verification. The Guidelines are not mandatory rules and solicitors may exercise their professional judgment in the particular circumstances of a case. Nothing in the Guidelines -
  - (a) precludes or prejudices the application of any statutory presumption or deeming provision including but not limited to any of the presumptions or deeming provisions under the Conveyancing and Property Ordinance (Cap. 219) (“CPO”) or the Powers of Attorney Ordinance (Cap. 31); or
  - (b) imposes on solicitors a duty of care of a standard higher than the standard of reasonable care under the common law.

For the purpose of the Guidelines, solicitors may, in exercising their professional judgment in the particular circumstances of a case, apply any statutory presumption or deeming provision where applicable and appropriate when they certify a relevant matter in the verification.

2. In the Guidelines, “Party” refers to an individual, a body corporate or a legal entity whose identity, capacity and authority and (if applicable) by whom the execution of an instrument supporting

an application lodged under the LTO is required to be verified by a solicitor and “Parties” shall be construed accordingly.

## **II. What matters are required to be verified**

3. The matters that are required to be verified by a solicitor as contained in the verification certificate include, amongst others, the following:
  - (a) Identity of the Party;
  - (b) Capacity and authority of the Party –
    - (i) For registration of dispositions<sup>1</sup> – to the best of the solicitor’s knowledge and belief, the Party is a legal person and has the right to enter into the instrument supporting the application or has produced satisfactory evidence and proof of the disposition where the disposition is not one created, varied or extinguished by an instrument; or
    - (ii) For other applications<sup>2</sup> – to the best of the solicitor’s knowledge and belief, the Party is a legal person and has the entitlement or right to protect his interests or claims in the registered property, to be registered as owner of the registered property, to apply for rectification of the Title Register or to apply to register a matter in respect of the registered property; and
  - (c) Due execution – to the best of the solicitor’s knowledge and belief, the instrument supporting the application has been duly executed by the Party.

The solicitor shall certify in the verification certificate that he has taken reasonable steps to verify the matters mentioned in (a) to (c) above.

## **III. Who shall conduct verification and make the relevant**

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<sup>1</sup> Examples of dispositions applications include transfer, charge, discharge and partial discharge of registered charge, lease, termination of lease, long term lease, deed of mutual covenant, easement, covenant, release and extinguishment of registered easement/covenant.

<sup>2</sup> Examples of other applications include applications for registration of overriding interests, charging order, consent caution, non-consent caution, inhibition order, transmission, occupation permit and certificate of compliance; and application for rectification of the Title Register.

## **certification**

4. Verification shall be conducted and the relevant certification shall be made by a solicitor. It is envisaged that there will be, in general, 4 scenarios and different forms of verification certificate shall be adopted in different scenarios:
  - (a) Scenario 1 - both/all Parties to the subject of the application (the “Matter”) have separate legal representations (e.g. transfer);
  - (b) Scenario 2 - one Party to the Matter has legal representation but the other Party is not legally represented or all Parties to the Matter have the same legal representation (e.g. mortgage, charge, discharge of mortgage/registered charge, transfer where joint representation is permitted, lease);
  - (c) Scenario 3 - the Matter does not involve a conveyancing transaction between different parties (e.g. transmission on death, registration of the personal representative under a grant as owner in that capacity, registration of charging order, non-consent caution or occupation permit and combination or division of lots) and the applicant may or may not have legal representation; and
  - (d) Scenario 4 - both/all Parties to the Matter do not have legal representation.
5. In scenario 1, verification shall be made by the Parties’ respective solicitors acting for them. The applicant’s solicitor shall complete Form A1 and the solicitor acting for the Party who is not the applicant shall complete Form B.
6. In scenario 2, if the applicant’s solicitor makes the verification in respect of all Parties (including his client(s) and, as the case may be, the other Party who is not legally represented), he shall complete Form A2. Where the applicant’s solicitor does not make verification in respect of the other Party who is not legally represented, the applicant’s solicitor shall complete Form A1 in respect of the applicant, and the other Party will have to engage a solicitor to make the verification and complete Form B.

7. In scenario 3, the verification shall be made by the applicant's solicitor (if the applicant is legally represented), or by a solicitor engaged by the applicant for the purpose of making the verification and lodging the application (if the applicant is not legally represented), and Form A1 shall be used in either case.
8. In scenario 4, the Parties shall engage solicitors for the purpose of making the verification and lodging the application. If the Parties engage the same solicitor, Form A2 shall be adopted. If the Parties engage different solicitors, Form A1 (for the applicant) and Form B (for the other Party) shall be adopted.

#### **IV. Identity**

##### **A. Identity verification of an individual**

9. Identity verification is a process carried out to confirm that the persons are who they claim to be.
10. Subject to paragraph 22 of the Guidelines, identity verification should be conducted by the solicitor during a face-to-face in-person interview with the Party concerned. If there is an exceptional case where a face-to-face meeting is not practicable, e.g. the Party is subject to quarantine arrangement, the solicitor may consider, having regard to the circumstances of the case, whether alternative measures may be adopted such as video conference or Zoom meeting in appropriate cases.
11. The solicitor should check at the interview that the Party produces his original identification document which contains a photo depicting the Party (such as an identity card or passport) and appears to be current and valid.
12. The solicitor should be satisfied that the Party bears a reasonable likeness to the person as shown in the photo contained in the original identification document. If the Party does not bear a reasonable likeness to the person as shown in the photo, unless the solicitor personally knows the Party and is satisfied as to his identity, the solicitor should take further steps to verify the identity of the Party. For example, the solicitor may consider requesting

the Party to produce further proof of identity such as other identification documents containing his recent photo, a statutory declaration made by a solicitor, a notary public or other professional (such as a certified public accountant) who personally knows the Party confirming the identity of the Party, or a recent photo of the Party signed by a solicitor, a notary public or other professional (such as a certified public accountant) who personally knows the Party confirming his identity.

13. The solicitor acting for a transferor, mortgagor, chargor or a Party disposing of his rights and interests in the subject property should also obtain documents evidencing such Party's connection to the subject property, such as :

- (a) recent utility bills, rates and/or Government rent demand notes and/or insurance policy which contain(s) the name of the Party and the address of the subject property; and/or
- (b) facility letter and/or notice for instalment payments or payment schedule relating to a mortgage on the subject property addressed to the Party and issued by the mortgagee.

**B. Identity verification of a body corporate**

14. Where the Party is a body corporate, the solicitor should ascertain the existence and the legal status of the Party and verify the identity of the person who executes documents on behalf of the Party.

**15. (a) Hong Kong Company and Registered Non-Hong Kong Company**

For a body corporate incorporated in Hong Kong ("Hong Kong Company") or a body corporate registered as a non-Hong Kong company under Part 16 of the Companies Ordinance (Cap. 622) or the relevant part of its predecessor Ordinance ("Registered Non-Hong Kong Company"), the solicitor should :

- (1) inspect the original or a certified copy (certified by a lawyer qualified to practise in Hong Kong) or an

electronic copy obtained from the Companies Registry (“CR”) or the Business Registration Office (as the case may be) of (1) the Certificate of Incorporation or the Certificate of Registration of Non-Hong Kong Company or the equivalent certificate issued by the CR (as the case may be) and (2) valid Business Registration Certificate (if applicable) of that body corporate; and

- (2) verify the existence and legal status of the body corporate by conducting search at the CR.

Where the Hong Kong Company is incorporated or the Registered Non-Hong Kong Company is registered via the electronic company incorporation service provided by the CR, the Certificate of Incorporation, the Certificate of Registration of Non-Hong Kong Company or the equivalent certificate issued by the CR (as the case may be) and the Business Registration Certificate (if applicable) in electronic form as provided by the CR will suffice. The solicitor is not required to inspect any certified copy of the above certificates.

For the purpose of the application of paragraph 15(a) of the Guidelines, inspection of the aforesaid documents is not required for the verification of the above Hong Kong Company or Registered Non-Hong Kong Company if -

- (i) the instrument supporting the application or the subject transaction is a lease, entered into by such a body corporate as lessor for a term not exceeding 3 years or as lessee, which does not operate as a conveyance on sale and no premium or valuable consideration (other than payment of rent) has been paid or given by the lessee for the grant of the lease;
- (ii) the instrument supporting the application or the subject transaction is a discharge of a mortgage signed/executed in accordance with section 55 or 56 of the CPO by such a body corporate which is a bank or a financial institution licensed under the Banking Ordinance (Cap. 155) or a money lender licensed under the Money Lenders

Ordinance (Cap. 163); or

- (iii) the instrument supporting the application or the subject transaction is a release/reassignment of a security document executed by such a body corporate which is a bank or a financial institution licensed under the Banking Ordinance (Cap. 155) or a money lender licensed under the Money Lenders Ordinance (Cap. 163).

**(b) Non-Registered Overseas Company**

For a body corporate not incorporated in Hong Kong and not registered as a Registered Non-Hong Kong Company (“Non-Registered Overseas Company”), the solicitor should inspect the original or certified copy (certified by a lawyer or notary public qualified to practise in the jurisdiction where such body corporate is incorporated) of (i) the certificate of incorporation, (ii) the certificate of good standing and (iii) an updated certificate of incumbency (or equivalent certificates) for making the verification. Where the original or certified copies of the aforesaid documents are not available, copies of the said documents from a reliable independent source (such as electronic copies obtained from the overseas registries or relevant competent authorities, regulated professionals or agencies which provide corporate services for overseas body corporates) will suffice.

For the purpose of the application of paragraph 15(b) of the Guidelines -

- (i) inspection of the aforesaid documents is not required for the verification of the above Non-Registered Overseas Company if the instrument supporting the application or the subject transaction is a lease, entered into by such Non-Registered Overseas Company as lessor for a term not exceeding 3 years or as lessee, which does not operate as a conveyance on sale and no premium or valuable consideration (other than payment of rent) has been paid or given by the lessee for the grant of the lease; and

- (ii) inspection of the updated certificate of incumbency (or equivalent certificates) is not required if the instrument supporting the application or the subject transaction is a discharge of a mortgage signed/executed in accordance with section 55 or 56 of the CPO by such Non-Registered Overseas Company unless its signatory is a director or a secretary of such Non-Registered Overseas Company in which event inspection of the updated certificate of incumbency (or equivalent certificates) is required for checking whether such signatory is a director or secretary of such Non-Registered Overseas Company.

**(c) Body corporate not incorporated in Hong Kong**

Where a body corporate not incorporated in Hong Kong (including both Registered Non-Hong Kong Company and Non-Registered Overseas Company) is a transferor, mortgagor, chargor or a Party disposing of its rights and interests in the subject property<sup>3</sup> or is a Party executing a release or reassignment of security document as the holder of the security, the solicitor should also obtain a legal opinion issued by a lawyer qualified to practise law in the jurisdiction where such body corporate is incorporated for making the verification on the basis of such legal opinion, if applicable.

For the purpose of the application of paragraph 15(c) of the Guidelines, such legal opinion is not required for verification of the above overseas body corporate if –

- (i) the instrument supporting the application or the subject transaction is a lease, entered into by such a body corporate as lessor for a term not exceeding 3 years, which does not operate as a conveyance on sale and no premium or valuable consideration (other than payment of rent) has been paid or given by the lessee for the grant of the lease; or

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<sup>3</sup> For avoidance of doubt, discharge of a mortgage signed/executed in accordance with section 55 or 56 of the CPO is not regarded as an instrument disposing of rights and interests in a property in the Guidelines.



- (ii) the instrument supporting the application or the subject transaction is a release/reassignment of a security document executed by such a body corporate in accordance with section 20 of the CPO.
- 16. If the body corporate has only recently filed notice with the CR to change its registered office, directors or any office holder, etc. prior to the entering into of the relevant transaction, the solicitor should stay alert and take further steps to verify the identity of the body corporate.
- 17. The solicitor shall also take reasonable steps to (i) verify the identity of the person who executes document(s) in relation to the subject dealing and/or application on behalf of the body corporate; and (ii) check that such person has the power or is authorised to represent the body corporate. Please also refer to paragraph 28(c) of the Guidelines on verification of authority of a person to represent the body corporate.
- 18. The solicitor verifying the identity of a transferor, mortgagor, chargor or a Party disposing of its rights and interests in the subject property, which is a body corporate, should also obtain documents evidencing such Party's connection to the subject property, such as :
  - (a) recent utility bills, rates and/or Government rent demand notes and/or insurance policy which contain(s) the name of the Party and the address of the subject property; and/or
  - (b) facility letter and/or notice for instalment payment or payment schedule relating to a mortgage on the subject property addressed to the Party and issued by the mortgagee.

### **C. Identity verification of an attorney**

- 19. Where a solicitor acts on instruction from an attorney of a Party, the solicitor shall inspect the original document conferring the authority on the attorney (such as a power of attorney). Where the original document is not available, the solicitor shall exercise

his professional judgment to see if there is a reasonable explanation for the non-production of the original document and to determine whether to accept a copy thereof certified by a solicitor. Where the solicitor acts for a bank or a financial institution licensed under the Banking Ordinance (Cap. 155) or a money lender licensed under the Money Lenders Ordinance (Cap. 163) or a foreign bank or a foreign financial institution not licensed under the Banking Ordinance (Cap. 155) and appears to be licensed for banking or financial business in its place of incorporation and the original power of attorney is kept by the bank or financial institution or money lender, the solicitor may accept a copy of the power of attorney certified by a solicitor and produced by the bank or financial institution or money lender.

20. The solicitor shall enquire into the relationship between the attorney and the donor, and take reasonable steps to verify the identity of the attorney in accordance with paragraphs 9 to 12 of the Guidelines (where the attorney is an individual) or paragraphs 14 to 17 of the Guidelines (where the attorney is a body corporate). The solicitor may consider taking further steps to verify the identity of the attorney such as comparing the specimen signature (if any) of the attorney in the power of attorney with his signature appended in front of the solicitor, or making enquiries with the attorney about the reasons and the circumstances for the donor conferring the power on the attorney.
21. Unless the solicitor personally knows and is satisfied with the identity of the donor, or the solicitor or his firm acted for the donor in the preparation and execution of the relevant power of attorney, the solicitor shall take reasonable steps to verify the identity of the donor and where practicable should obtain copies of identification documents of the donor. In any event, where practicable, the solicitor should consider initiating contact with the donor to confirm the donor's instructions and check that the power of attorney is still in force.

#### **D. Delegation of identity verification**

22. The solicitor may delegate to a trusted colleague under his

supervision in accordance with the Hong Kong Solicitors' Guide to Professional Conduct published by the Law Society of Hong Kong and whom he could reasonably rely on to carry out the identity verification on his behalf in accordance with the Guidelines. The certification is to be made by the solicitor even though the verification of identity is undertaken by his colleague. However, the ultimate responsibility for ensuring proper identity verification of the Party remains with the solicitor who makes the certification.

23. For a Party not present in Hong Kong, the solicitor may rely on the identity verification process by a foreign lawyer or notary public qualified to practise in the jurisdiction in which the verification occurs, provided that the solicitor is satisfied that such lawyer or notary public appeared to have properly conducted the verification of identity of such Party. Nevertheless, the certification is to be made by the solicitor even though the verification of identity is undertaken by the foreign lawyer or the notary public.

## **V. Legal person, capacity, authority and entitlement**

### **A. General**

24. In assessing legal capacity and authority of a Party, the solicitor needs to be aware of the following requirements:
  - (a) the Party is a legal person; and
  - (b) the Party has, as the case may be, the right to enter into the instrument supporting the application or the subject transaction, or has the right or entitlement to lodge or consent to the other Party lodging an application under the LTO.
25. The solicitor shall take reasonable steps to verify the capacity and authority of the Party.

### **B. Legal person and capacity**

26. The following steps are examples that may be carried out by the solicitor to verify that the Party is a legal person and has the necessary legal capacity to enter into the instrument supporting the application or to lodge an application in respect of the Matter:

**(a) Individual**

For an individual, the solicitor should check whether :

- (i) the individual attains the age of 18, in particular where the individual is a transferor, mortgagor, chargor or a Party disposing of his rights and interests in the subject property;
- (ii) any petition for bankruptcy order against the individual has been presented;
- (iii) the individual is an undischarged bankrupt, and if the individual is an undischarged bankrupt, he has obtained the necessary approval from the relevant authority to enter into the transaction;
- (iv) the individual has mental capacity to deal with the transaction if the solicitor is aware of any special circumstances which would put him on inquiry; and
- (v) the individual is under any duress or other undue influence if the solicitor is aware of any special circumstances which would put him on inquiry.

**(b) Hong Kong Company and Registered Non-Hong Kong Company**

For a Hong Kong Company or a Registered Non-Hong Kong Company, the solicitor should:

- (i) conduct a company search at the CR and check that the body corporate is duly incorporated or registered (as the case may be);
- (ii) check whether any petition for the winding up of the body corporate has been presented; and
- (iii) check whether the body corporate is in receivership or liquidation.

**(c) Non-Registered Overseas Company**

In the case of a Non-Registered Overseas Company, the solicitor who makes the verification certificate should inspect the original or a certified copy (certified by a lawyer or notary public qualified to practise in the jurisdiction where such body corporate is incorporated) of (i) a certificate of incorporation,

(ii) an updated certificate of incumbency and (iii) a certificate of good standing (or equivalent certificates) of the subject body corporate for verification purpose. Where the original or certified copies of the aforesaid documents are not available, copies of the said documents from a reliable independent source (such as electronic copies obtained from the overseas registries or relevant competent authorities, regulated professionals or agencies which provide corporate services for overseas body corporates) may also be accepted.

For the purpose of the application of paragraph 26(c) of the Guidelines -

- (i) inspection of the aforesaid documents is not required for verification of the above Non-Registered Overseas Company if the instrument supporting the application or the subject transaction is a lease, entered into by such a body corporate as lessor for a term not exceeding 3 years or as lessee, which does not operate as a conveyance on sale and no premium or valuable consideration (other than payment of rent) has been paid or given by the lessee for the grant of the lease; and
- (ii) inspection of the updated certificate of incumbency (or equivalent certificates) is not required if the instrument supporting the application or the subject transaction is a discharge of a mortgage signed/executed in accordance with section 55 or 56 of the CPO by such Non-Registered Overseas Company unless its signatory is a director or a secretary of such Non-Registered Overseas Company in which event inspection of the updated certificate of incumbency (or equivalent certificates) is required for checking whether such signatory is a director or secretary of such Non-Registered Overseas Company.

**(d) Body corporate not incorporated in Hong Kong**

Where a body corporate not incorporated in Hong Kong (including both Registered Non-Hong Kong Company and

Non-Registered Overseas Company) is a transferor, mortgagor, chargor or a Party disposing of its rights and interests in the subject property or is a Party executing a release or reassignment of security document as the holder of the security, the solicitor should also obtain legal opinion from a lawyer qualified to practise law in the jurisdiction where such body corporate is incorporated in respect of its due incorporation and (if applicable) good standing and whether it is in receivership or liquidation.

For the purpose of the application of paragraph 26(d) of the Guidelines, such legal opinion is not required for verification of the above overseas body corporate if -

- (i) the instrument supporting the application or the subject transaction is a lease, entered into by such a body corporate as lessor for a term not exceeding 3 years, which does not operate as a conveyance on sale and no premium or valuable consideration (other than payment of rent) has been paid or given by the lessee for the grant of the lease; or
- (ii) the instrument supporting the application or the subject transaction is a release/reassignment of a security document executed by such a body corporate in accordance with section 20 of the CPO.

**C. Right to enter into the instrument supporting the application or the transaction or to lodge or consent to the other Party lodging the application in respect of the Matter**

**27. Individual and body corporate**

In the case of a transferor, mortgagor, chargor or a Party disposing of his rights and interests in the subject property, the solicitor should carry out the following steps for verification of such Party's authority:

- (a) conduct a land search at the Land Registry to confirm that such

Party is named as the registered owner of the subject property or has right to deal with the subject property; and

- (b) obtain other documents for verification purpose, such as:
  - (i) recent utility bills, rates and/or Government rent demand notes and/or insurance policy which contain(s) the name of the Party and the address of the subject property; and/or
  - (ii) facility letter and/or notice for instalment payments or payment schedule relating to a mortgage on the subject property addressed to the Party and issued by the mortgagee.

## **28. Hong Kong Company**

In the case of a transferor, mortgagor, chargor or a Party disposing of its rights and interests in the subject property, if such Party is a Hong Kong Company, additional steps should be taken to check that:

- (a) the transaction is permitted under its articles of association (“articles”) and the relevant legislation, rules and regulations;
- (b) such Party has passed any necessary resolutions in accordance with its articles and the relevant legislation, rules and regulations, which appear to have been passed authorising the transaction and if applicable, the use of its common seal; and
- (c) the signatory is authorised by such Party to execute the subject document on its behalf.

## **29. Body corporate not incorporated in Hong Kong**

In the case of a transferor, mortgagor, chargor or a Party disposing of its rights and interests in the subject property or a Party executing a release or reassignment of security document as the holder of the security being a body corporate not incorporated in Hong Kong (including both Registered Non-Hong Kong Company and Non-Registered Overseas Company), the solicitor who makes the verification certificate should obtain a legal opinion from a foreign lawyer qualified to practise law in the jurisdiction where such body corporate is incorporated in respect

of its authority and power to enter into the transaction.

For the purpose of the application of paragraph 29 of the Guidelines, such legal opinion is not required for verification of the above overseas body corporate if -

- (a) the instrument supporting the application or the subject transaction is a lease, entered into by such a body corporate as lessor for a term not exceeding 3 years, which does not operate as a conveyance on sale and no premium or valuable consideration (other than payment of rent) has been paid or given by the lessee for the grant of the lease; or
- (b) the instrument supporting the application or the subject transaction is a release/reassignment of a security document executed by such a body corporate in accordance with section 20 of the CPO.

### **30. Power of Attorney**

If the transaction is authorised under a power of attorney, the solicitor should check that:

- (a) the power of attorney appears to be genuine and duly executed by the donor;
- (b) the transaction is permitted within the scope of what may be authorised under the power of attorney; and
- (c) the power of attorney appears to be still valid, i.e. is current and not suspended or revoked if the solicitor is aware of any special circumstances that would put him on inquiry.

### **D. Satisfactory evidence and proof**

- 31. If the disposition is not created, varied or extinguished by an instrument, the nature of such disposition shall be set out in the verification certificate. The solicitor should obtain satisfactory evidence and proof of such disposition, and such evidence and proof shall be submitted together with the application.
- 32. For example, where a registered lease is surrendered by delivery of possession without any instrument, the solicitor may obtain a



certified copy of the letter signed by the registered owner acknowledging receipt (and the date of receipt) of the keys of the subject property from the tenant or such other satisfactory evidence on delivery of physical possession of the subject property.

33. Another example is the case of a registered easement being extinguished otherwise by an instrument. If the document of the grant of the registered easement provides that the easement shall expire on a date or upon the occurrence of a specified event, the solicitor should obtain and submit such document of grant (or a copy thereof certified by a solicitor), and for latter case any other evidence which proves the occurrence of such event.

**E. Entitlement to protect interests/claims in or to be registered as owner of the subject property, etc.**

34. For certain applications lodged under the LTO, the solicitor is required to verify that the applicant has the entitlement or right to apply to protect his interests/claims in the subject property, to be registered as owner, to apply for rectification of the Title Register or to apply to register a Matter by obtaining and checking the necessary supporting documentation. For example, for applications such as application for registration of a non-consent caution supported by lis pendens, the solicitor should check that the applicant is a party to the lis pendens claiming the interests in the property. For applications such as an application for registration of a consent caution or for rectification of the Title Register with consent of the other interested Party, the solicitor who verifies for the Party who is not the applicant is also required to check that the other interested Party has the entitlement and right to give consent to the applicant to lodge the application.
35. In the case of an application for registration of the transmission on death of a sole owner of the subject property, the solicitor is required to verify that the applicant has the entitlement to be registered as the owner of the subject property by obtaining and checking relevant supporting documents, such as the original or a

copy of the grant of probate or the letters of administration certified by a solicitor and to verify the identity of the applicant in accordance with paragraphs 9 to 12 above (where the applicant is an individual) or paragraphs 14 to 17 above (where the applicant is a body corporate).

## **VI. Due execution**

### **A. General**

36. Where the instrument supporting the application requires a Party's execution, the solicitor shall take reasonable steps to verify that the instrument supporting the application has been duly executed by the Party.
37. The general execution requirements usually include the following:
- (a) the instrument has been executed by or on behalf of the Party;
  - (b) the signature of the signatory has been attested by a witness (if so required by law); and
  - (c) the method of execution by the Party complies with the required formalities for the instrument, e.g. by hand or under seal.

### **B. Individual**

38. The following steps are examples that may be carried out by the solicitor where the Party or the signatory is an individual:
- (a) check the identity, capacity and authority of the Party or the signatory and witness the signing of the instrument by the Party or the signatory;
  - (b) check that the execution of the instrument complies with the relevant legislation, rules and regulations of Hong Kong (e.g. the requirements for the execution of a deed); and
  - (c) check that the instrument is signed by the Party or the signatory in the presence of a witness (if attestation is required by law).

### **C. Body corporate**

### **39. Hong Kong Company**

If any Party to the instrument or the signatory is a Hong Kong Company, the solicitor shall also check:

- (a) that the execution of the instrument by the Party or the signatory complies with its articles and relevant legislation, rules and regulations (e.g. the requirements for execution of a deed);
- (b) the authorisation of the signatory(ies) to sign for and on behalf of the Party or the signatory, such as checking the articles and the necessary board resolutions authorising the signatory(ies) to execute the instrument and, if applicable, the use of its common seal; and
- (c) the identity and capacity of the signatory(ies), such as checking the register of directors or conducting necessary company searches.

### **40. Body corporate not incorporated in Hong Kong**

In the case of a transferor, mortgagor, chargor or a Party disposing of its rights and interests in the subject property or a Party executing a release or reassignment of security document as the holder of the security being a body corporate not incorporated in Hong Kong (including both Registered Non-Hong Kong Company and Non-Registered Overseas Company) or its signatory being such a body corporate not incorporated in Hong Kong, the solicitor who makes the verification certificate should obtain a legal opinion from a foreign lawyer in the jurisdiction where such body corporate is incorporated on the due execution of the instrument by that overseas body corporate.

For the purpose of the application of paragraph 40 of the Guidelines, such legal opinion is not required for verification of the above overseas body corporate if -

- (a) the instrument supporting the application or the subject transaction is a lease, entered into by such a body corporate as lessor or signed by such a body corporate as a signatory on

behalf of the lessor, for a term not exceeding 3 years which does not operate as a conveyance on sale and no premium or valuable consideration (other than payment of rent) has been paid or given by the lessee for the grant of the lease; or

- (b) the instrument supporting the application or the subject transaction is a release/reassignment of a security document executed by such a body corporate in accordance with section 20 of the CPO.

#### **D. Power of attorney**

41. If the instrument is executed by an attorney under a power of attorney of a Party, the solicitor shall check:

- (a) that the execution of the instrument by the attorney is within the scope of what may be authorised under the power of attorney;
- (b) that the power of attorney appears to be still valid, i.e. is current and not suspended or revoked if the solicitor is aware of any special circumstances that would put him on inquiry;
- (c) that the power of attorney appears to have been duly executed by the donor; and
- (d) the identity of the attorney and, if the circumstance permits, the donor.

42. Other than carrying out the above steps, the solicitor may also carry out further steps as appropriate for verification purpose.

#### **E. Execution in Hong Kong**

43. The solicitor making the verification certificate may witness the execution of the instrument supporting the application or delegate the witnessing to another person (if such delegation does not contravene any legal requirement). A delegate shall be a trusted colleague of the solicitor under his supervision in accordance with the Hong Kong Solicitors' Guide to Professional Conduct published by the Law Society of Hong Kong and whom the solicitor making the verification certificate could reasonably rely

on carrying out the witnessing on his behalf and the solicitor shall make enquiry with the delegate to confirm that the instrument has been signed by the signatory in his presence. The solicitor making the verification certificate shall remain ultimately responsible for the certification of the due execution of the instrument no matter who witnesses the execution of the instrument. In the case of execution of an instrument by a bank or a financial institution licensed under the Banking Ordinance (Cap. 155) or a money lender licensed under the Money Lenders Ordinance (Cap. 163) or a body corporate, a solicitor making the verification certificate may also verify the execution of the instrument supporting the application by verifying the signature of the signatory if (a) such signatory is known to that solicitor and that solicitor recognises the signatory's signature or (b) such signatory's signature can be verified by reference to his specimen signature provided or certified by the bank, financial institution or body corporate in question; or (c) where a face-to-face meeting is not practicable and the solicitor considers appropriate having regard to the exceptional circumstances of the case, signing of the instrument as agreed by the parties to the instrument is to be seen via video conference or Zoom meeting.

#### **F. Execution outside Hong Kong**

44. Where any Party or signatory executes the instrument supporting the application outside Hong Kong and if the execution is witnessed and attested, such attesting witness is expected to be produced original identification document by the Party or signatory and should confirm the identity of the Party or signatory.
45. The solicitor should also check that all the authentication and legalisation formalities for the instrument executed abroad to be used in Hong Kong have been completed, if the circumstances arise or warrant.

#### **VII. Further steps**

46. The steps set out in the Guidelines are not exhaustive. What constitutes "reasonable steps" will depend on the circumstances of each case. The solicitor is best placed to decide whether

additional steps are required to conduct verification to mitigate the risk of property fraud. Circumstances where it may be reasonable for the solicitor to take further steps include (but not limited to) the following situations:

- (a) the solicitor knows or suspects that the identification document produced by the Party or the signatory and/or the declarant is not genuine;
- (b) the Party or the signatory does not appear to be the person to whom the identification document(s) relate;
- (c) where there appears to be inconsistency between the documents supporting the identification;
- (d) in case of a transfer, mortgage, charge or change of name, the application is authorised on behalf of the Party under a power of attorney; or
- (e) the registered office and/or the directors or any office holder of a Party, who is a body corporate, have been recently changed prior to the relevant transaction.

47. Examples of further steps that could be taken include the following:

- (a) obtaining more identification documents or other supporting documents from and making further enquiries with the Party;
- (b) if the identification or relevant supporting document is not in either one of Hong Kong's official languages, having the document(s) translated by an independent translator; and
- (c) where practicable, initiating contact with the donor under the power of attorney to confirm his instructions and check that the power of attorney is still in force.

### **VIII. Retention of supporting evidence**

48. Without prejudice to Practice Direction P issued by the Law Society of Hong Kong, where an application has been accepted for registration, the solicitor shall retain the evidence supporting the verification of the Party for such application for the following periods:

- (a) 15 years for conveyancing matters; and

- (b) 7 years for tenancy and other matters.

## **IX. Compliance with the Guidelines**

- 49. The Guidelines are not meant to be exhaustive. Whether “reasonable steps” have been taken in making the necessary verification or whether the solicitor has discharged his duty towards his client or under the verification requirements will be a question of fact depending on the circumstances of each case and in the event of subsequent challenge or dispute, would be a matter for the court to determine.