



Ref : ETWB(PS) 107/8

Group : 5

23 December 2002

**Environment, Transport and Works Bureau**  
**Technical Circular (Works) No. 54/2002**

**Guidance on Execution of Public Works Contracts under Seal**

**Scope**

This Circular provides guidelines on execution of all public works contracts under seal.

**Effective Date**

2. This Circular takes immediate effect.

**Effect on Existing Circulars**

3. This Circular has no effect on other technical circulars. However, where there are conflicting provisions between this Circular and other technical circulars promulgated before this Circular, the provisions in this Circular shall prevail.

**Background**

4. The general procedures for execution of contracts are set out in the Stores and Procurement Regulation 505. However, it is considered that some guidelines should be provided to ensure that works departments have checked thoroughly the following during the execution of public works contracts under seal: -

- (a) the full list of documents required to be produced by the contractors is in place;
- (b) the documents produced by the contractors are in order;
- (c) the contractors' authorized persons have the authority to enter into contracts on behalf of the contractors; and
- (d) the powers of attorney produced by the contractors are valid.

### **Guidelines**

5. The following guidelines in the form of checklists and sample attestation clauses are provided for works departments to follow: -

	<u>Party/Capacity</u>	<u>Appendix</u>
(a)	Government	A
(b)	Unincorporated body	B
(c)	Company incorporated in Hong Kong	C
(d)	Attorney under a power of attorney	D
(e)	Company incorporated in mainland China	E
(f)	Company incorporated outside Hong Kong	F
(g)	Unincorporated joint venture	G

### **Legal Advice**

6. It should be noted that the above guidelines are not hard and fast rules. There are other ways of attestation which constitute valid execution. Works departments are advised to seek legal advice if they are in doubt.

**(W S Chan)**  
**Deputy Secretary for the Environment,**  
**Transport and Works (Transport and Works) W2**

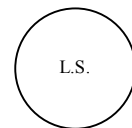
**EXECUTION BY GOVERNMENT**

<b>Checklist</b>	<b>Remarks</b>
<ul style="list-style-type: none"> <li>• The contract shall be signed on behalf of the Government by an officer at directorate level unless the Secretary for Financial Services and the Treasury has authorized otherwise.</li> <li>• Execution of the contract should be witnessed. The witness should sign and his/her name, occupation and address should be stated.</li> </ul>	<p>See paragraph 505(e) of the Stores and Procurement Regulations.</p>

*Sample attestation clause in a deed for use by Government.<sup>1</sup>*

SIGNED, SEALED and DELIVERED by     )  
the Employer by                             )  
[insert name and appointment of officer]     )  
in the presence of:                             )  
   )  
   )  
.....   )  
[Name]   )  
[Occupation]                                     )  
[Address]   )

*[Signature of the officer]<sup>1</sup>*



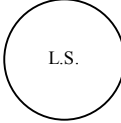

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<sup>1</sup> The italic parts are not part of the execution clause. They are for guidance or information only.

**EXECUTION BY UNINCORPORATED BODY**

<b>Checklist</b>	<b>Remarks</b>
<p><b>I. <u>Sole Proprietor</u></b></p> <ul style="list-style-type: none"><li>• If it has not been done during tender stage, obtain a certified copy each of the Business Registration Certificate and the extract of information on the business register from the Commissioner of Inland Revenue. Use the information contained in the certified copies to check against those stated in the Articles of Agreement.</li><li>• If execution is pursuant to a power of attorney, ask for the production of the original power of attorney. If the power of attorney is specifically granted for execution of the contract, keep the original power of attorney or a certified copy thereof in the file. If the power of attorney is a general one, keep a certified copy of it in the file.</li><li>• Obtain other relevant documents, e.g. ask for production of identity card for verification of the identity of the signatory. Make a note on file that such verification has been made.</li><li>• Execution of the contract should be witnessed. The witness should sign and his/her name, occupation and address should be stated.</li></ul>	<p>See Stores and Procurement Regulation 505.</p> <p>See <b>Appendix D</b> for execution of the contract pursuant to a power of attorney and proper certification of a copy of the power of attorney.</p>

*Sample attestation clause in a deed for use by a sole proprietor.<sup>1</sup>*

SIGNED, SEALED and DELIVERED )  
by [insert name of sole proprietor] )  
trading as [name of the firm] )  
in the presence of: )  
 ) ) *[Signature of the sole*  
 ) ) *proprietor]<sup>1</sup>*   
..... )  
[Name] )  
[Occupation] )  
[Address] )

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<sup>1</sup> The italic parts are not part of the execution clause. They are for guidance or information only.

## II. Partnership

- If it has not been done during tender stage, obtain a certified copy each of the Business Registration Certificate and the extract of information on the business register from the Commissioner of Inland Revenue. Use the information contained in the certified copies to check against those stated in the Articles of Agreement.
- If execution is pursuant to a power of attorney, ask for the production of the original power of attorney. If the power of attorney is specifically granted for execution of the contract, keep the original power of attorney or a certified copy thereof in the file. If the power of attorney is a general one, keep a certified copy of it in the file.
- Obtain other relevant documents, e.g. ask for production of identity cards for verification of the identity of the signatories. Make a note on file that such verification has been done.
- The contract shall be executed by all the partners.
- Execution of the contract should be witnessed. The witness should sign and his/her name, occupation and address should be stated.

See Stores and Procurement Regulation 505.

See **Appendix D** for execution of the contract pursuant to a power of attorney and proper certification of the power of attorney.

*Sample attestation clause in a deed for use by partners of a partnership.<sup>1</sup>*

SIGNED, SEALED and DELIVERED by )  
[ ]<sup>2</sup> and )  
[ ]<sup>2</sup> ) *[Signature of the individual* (L.S.)  
being the partners of the Contractor ) *partner]<sup>1</sup>*  
in the presence of: )  
) *[Signature of the individual* (L.S.)  
) *partner]<sup>1</sup>*  
..... )  
[Name] )  
[Occupation] )  
[Address] )

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<sup>1</sup> The italic parts are not part of the execution clause. They are for guidance or information only.

<sup>2</sup> Insert name(s) of partners. Add more names if there are more partners.

**EXECUTION BY COMPANY INCORPORATED IN HONG KONG**

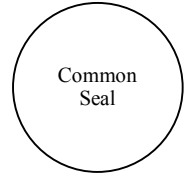
<b>Checklist</b>	<b>Remarks</b>
<ul style="list-style-type: none"><li>• Obtain a copy of the Certificate of Incorporation of the company from the Companies Registry if this is the first time a works department deals with the company.</li><li>• Obtain the registered office address of the company from the Companies Registry and check on its registered office address against that stated in the Articles of Agreement.</li><li>• Obtain a copy of the latest Annual Return from the Companies Registry or obtain a certified copy from the company and check the identity of the directors and the secretary.</li><li>• Obtain a copy of the Articles of Association (and the relevant Special Resolution if any amendment was made to the Articles of Association) from the Companies Registry or obtain a certified copy from the company.</li><li>• If the Articles of Association require the authorization of a board resolution before (a) its common seal can be used and/or (b) a person can sign a document with the common seal affixed or witness and attest the affixing of the common seal, obtain the original board resolution or a certified copy thereof from the company and check the following:<ol style="list-style-type: none"><li>1. sufficiency of quorum in accordance with the provisions of the Articles of Association;</li><li>2. approval to affix the common seal to the contract;</li></ol></li></ul>	<p>Ensure that the requirements on sealing and signing of a contract by a company are in accordance with the relevant article of association on use of seal by a company.</p>

<p>and/or</p> <p>3. the person authorized to sign the contract with the common seal affixed or witness and attest the affixing of the common seal.</p> <ul style="list-style-type: none"> <li>• If execution is pursuant to a power of attorney, ask for production of the original power of attorney. If the power of attorney is specifically granted for execution of the contract, keep the original power of attorney or a certified copy thereof in the file. If the power of attorney is a general one, keep a certified copy of it in the file.</li> <li>• Obtain other relevant documents, e.g. ask for production of identity card(s) for verification of the identity of the signatory(ies). Make a note on file that such verification has been made.</li> <li>• Check that the common seal is a metallic seal with the name of the company engraved in legible characters.</li> <li>• Execution of the contract should be witnessed. The witness should sign and his/her name, occupation and address should be stated.</li> </ul>	<p>See <b>Appendix D</b> for execution of the contract pursuant to a power of attorney and proper certification of the power of attorney.</p> <p>See section 93(1)(b) of the Companies Ordinance.</p>
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*Sample attestation clause in a deed for use by company incorporated in Hong Kong:<sup>1</sup>*

SEALED with the COMMON SEAL of )  
[name of Contractor] )  
and SIGNED by )  
[ ) its [director(s) or )  
director and secretary or person(s) authorized to )  
sign the contract by its board of directors]<sup>2</sup> )  
in the presence of: )  
 )  
 )  
 )  
..... )  
[Name] )  
[Occupation] )  
[Address] )  
 )

*[Signature of the director(s)  
etc]<sup>1</sup>*



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<sup>1</sup> The italic parts are not part of the execution clause. They are for guidance or information only.  
<sup>2</sup> Select the correct expression for use. If none is applicable, insert an appropriate expression.

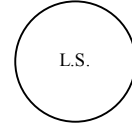
**EXECUTION UNDER A POWER OF ATTORNEY**

<b>Checklist</b>	<b>Remarks</b>
<ul style="list-style-type: none"><li>• Check the operative part to ensure that the attorney has sufficient authority to sign the contract in question.</li> <li>• Seek confirmation that the power of attorney has not been revoked.</li> <li>• Check that the power of attorney was executed in deed form.</li> <li>• Verify the identity of the attorney. Make a note in the file that such verification has been made.</li> <li>• Execution of the contract should be witnessed. The witness should sign and his/her name, occupation and address should be stated.</li></ul>	<p>Powers of attorney are strictly construed, i.e. any ambiguity will be construed in favour of the grantor and against the third party.</p> <p>But see the protection of third persons where power of attorney is revoked as stipulated in section 5(2) of the Powers of Attorney Ordinance. Seek legal advice if in doubt.</p> <p>Authority to execute a deed must in turn be granted by deed.</p>

*Sample attestation clause in a deed for use by an attorney:*<sup>1</sup>

SIGNED, SEALED and DELIVERED by )  
[the Contractor] by [ ] )  
his/her/its<sup>2</sup> attorney under power of attorney )  
dated [ ] )  
in the presence of: )  
..... )  
[Name] )  
[Occupation] )  
[Address] )

*[Signature of the attorney]*<sup>1</sup>



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<sup>1</sup> The italic parts are not part of the execution clause. They are for guidance or information only.

<sup>2</sup> Delete as appropriate.

The following is a sample certification of a copy of the power of attorney by either the donor of the power or a solicitor. The certification should appear at the end of each page of the copy of the power of attorney. The solicitor who certifies the copy must be a practising solicitor and not be suspended from practice at the material time.

(1) **Where the power of attorney consists of one page only:**

<p style="text-align: center;"><b><u>Power of Attorney</u></b></p> <p style="text-align: center;">[Text of power of attorney]</p> <p style="text-align: right;">I certify that this copy is a true and complete copy of the original power of attorney.</p> <p style="text-align: right;">(Signed) _____ Name [of donor of power or solicitor]</p> <p style="text-align: right;">Date _____</p>
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(2) **Where the power of attorney consists of two or more pages<sup>1</sup>:**

<p style="text-align: center;"><b><u>Power of Attorney</u></b></p> <p style="text-align: center;">[Text of power of attorney]</p> <p style="text-align: right;">I certify that this copy is a true and complete copy of the corresponding page of the original power of attorney.</p> <p style="text-align: right;">(Signed) _____ Name [of donor of power of solicitor]</p> <p style="text-align: right;">Date _____</p>
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<sup>1</sup> The certification must appear on each and every page of the copy of power of attorney.

**EXECUTION BY COMPANY INCORPORATED IN MAINLAND CHINA**

<b>Checklist</b>	<b>Remarks</b>
<ul style="list-style-type: none"><li>• Obtain a copy of the Certificate of Registration of Oversea Company from the Companies Registry if this is the first time a works department deals with the oversea company.</li><li>• Ask for the power of attorney. It must be notarised and authenticated by the Ministry of Foreign Affairs of the PRC. Keep the original or a certified copy of it in the file.</li><li>• Ask for a PRC lawyer’s legal opinion on the power of attorney to the effect that the power of attorney was validly executed and that the relevant contract to be executed by the attorney will be legal, valid and binding on the company. Proof of the legal qualification of the PRC lawyer should be obtained.</li><li>• Obtain other relevant documents, e.g. ask for production of identity card for verification of the identity of the signatory. Make a note in the file that such verification has been made.</li><li>• Execution of the contract should be witnessed. The witness should sign and his/her name, occupation and address should be stated.</li></ul>	<p>See <b>Appendix D</b> for execution of the contract pursuant to a power of attorney and proper certification of a copy of the power of attorney.</p>

EXECUTION BY COMPANY INCORPORATED OUTSIDE HONG KONG

<b>Checklist</b>	<b>Remarks</b>
<ul style="list-style-type: none"><li>• Obtain a copy of the Certificate of Registration of Oversea Company from the Companies Registry if this is the first time a works department deals with the oversea company.</li><li>• Ask for the power of attorney. The power of attorney must be attested by a notary public. Keep the original power of attorney or a certified copy of it in the file.</li><li>• Ask for the legal opinion on the power of attorney from a lawyer qualified to practise in the country where the company was incorporated to the effect that the power of attorney was validly executed and that the relevant contract to be executed by the attorney will be legal, valid and binding on the company. Proof of legal qualification of the lawyer should be obtained.</li><li>• Apostille is required if the attested documents are from country which is a party to the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents.</li></ul>	<p>Normally oversea companies execute works contract through an attorney. See <b>Appendix D</b> for a sample attestation clause for use by an attorney and proper certification of a copy of the power of attorney.</p> <p>An apostille is a certificate issued by the competent authority of the state from which the attested documents emanate. For example, in UK, the competent authority to issue apostilles is the Foreign and Commonwealth Office.</p>

<ul style="list-style-type: none"><li>• Legalization of the attested documents at a consulate of the PRC in that place is required if the documents are from countries not a party to the Hague Convention.</li> <li>• Obtain other relevant documents, e.g. ask for production of identity card for verification of the identity of the signatory. Make a note in the file that such verification has been made.</li> <li>• Execution of the contract should be witnessed. The witness should sign and his/her name, occupation and address should be stated.</li></ul>	<p>Legalisation refers to the formality by which the diplomatic or consular agents of the country in which a document is to be produced certify the authenticity of the signature, the capacity in which the person signing the documents has acted and, where appropriate, the identity of the seal or stamp which it bears.</p>
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**EXECUTION BY UNINCORPORATED JOINT VENTURE**

<b>Checklist</b>	<b>Remarks</b>
<ul style="list-style-type: none"><li>• For guidance on execution by each of the participants in the unincorporated joint venture, please refer to <b>Appendices B to F</b> above, as the case may be.</li> <li>• Please refer to the attestation clauses provided in Appendix E to the Environment, Transport and Works Bureau Technical Circular (Works) No. 50/2002 or its subsequent amending circulars, if any.</li> <li>• Execution of the contract should be witnessed. The witness should sign and his/her name, occupation and address should be stated.</li></ul>	