

## POWERS OF ATTORNEY ACT

### Principal Act

<b>Act. No. 1972-13</b>	<i>Commencement</i>	1.12.1972
	<i>Assent</i>	30.11.1972

### English sources:

Powers of Attorney Act 1971 (1971 c.27)

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### ARRANGEMENT OF SECTIONS.

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### SCHEDULE.

AN ACT TO MAKE NEW PROVISION IN RELATION TO POWERS OF ATTORNEY AND THE DELEGATION BY TRUSTEES OF THEIR TRUSTS, POWERS AND DISCRETIONS.

**Short Title.**

1. This Act may be cited as the Powers of Attorney Act.

**Execution of instruments.**

2.(1) An instrument creating a power of attorney shall be signed and sealed by, or by direction and in the presence of, the donor of the power.

(2) Where such an instrument is signed and sealed by a person by direction and in the presence of the donor of the power, two other persons shall be present as witnesses and shall attest the instrument.

(3) This section is without prejudice to any requirement in, or having effect under, any other written law as to the witnessing of instruments creating powers of attorney and does not affect the rules relating to the execution of instruments by bodies corporate.

**Abolition of deposit or filing of instruments.**

3.(1) As from the commencement of this Act no instrument creating a power of attorney, and no copy of any such instrument, shall be deposited or filed in the Supreme Court under section 48 of the Conveyancing and Law of Property Act 1881 as in force in Gibraltar under section 3 of the (Application) English Law Act.

(2) This section does not affect any right to search for, inspect or copy, or to obtain an office copy of, any such document which has been so deposited or filed before the commencement of this Act.

**Proof of contents.**

4.(1) The contents of an instrument creating a power of attorney may be proved by means of a copy which—

- (a) is a reproduction of the original made with a photographic or other device for reproducing documents in facsimile; and
- (b) contains the following certificate or certificates signed by the donor of the power or by a barrister or solicitor, or by any

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member of a stock exchange mentioned in or declared by order made under section 7(2) that is to say-

- (i) a certificate at the end to the effect that the copy is a true and complete copy of the original; and
- (ii) if the original consists of two or more pages, a certificate at the end of each page of the copy to the effect that it is a true and complete copy of the corresponding page of the original.

(2) Where a copy of an instrument creating a power of attorney has been made which complies with subsection (1), the contents of the instrument may also be proved by means of a copy of that copy if the further copy itself complies with that subsection) taking references in it to the original as references to the copy from which the further copy is made.

## **Powers given as security.**

5.(1) Where a power of attorney is expressed to be irrevocable and is given to secure-

- (a) a proprietary interest of the donee of the power; or
- (b) the performance of an obligation owed to the donee,

then, so long as the donee has that interest or the obligation remains undischarged, the power shall not be revoked-

- (i) by the donor without the consent of the donee; or
- (ii) by the death, incapacity or bankruptcy of the donor or, if the donor is a body corporate, by its winding up or dissolution.

(2) A power of attorney given to secure a proprietary interest may be given to the person entitled to the interest and persons deriving title under him to that interest, and those persons shall be duly constituted donees of the power for all purposes of the power but without prejudice to any right to appoint substitutes given by the power.

(3) This section applies to powers of attorney whenever created.

## **Protection of donees and third parties.**

6.(1) A donee of a power of attorney who acts in pursuance of the power at a time when it has been revoked shall not, by reason of the revocation, incur any liability (either to the donor or to any other person) if at that time he did not know that the power had been revoked.

(2) Where a power of attorney has been revoked and a person, without knowledge of the revocation, deals with the donee of the power, the transaction between them shall, in favour of that person, be as valid as if the power had then been in existence.

(3) Where the power is expressed in the instrument creating it to be irrevocable and to be given by way of security then, unless the person dealing with the donee knows that it was not in fact given by way of security, he shall be entitled to assume that the power is incapable of revocation except by the donor acting with the consent of the donee and shall accordingly be treated for the purposes of subsection (2) as having knowledge of the revocation only if he knows that it has been revoked in that manner.

(4) Where the interest of a purchaser depends on whether a transaction between the donee of a power of attorney and another person was valid by virtue of subsection (2), it shall be conclusively presumed in favour of the purchaser that that person did not at the material time know of the revocation of the power if—

- (a) the transaction between that person and the donee was complete within twelve months of the date on which the power came into operation; or .
- (b) that person makes a statutory declaration, before or within three months after the completion of the purchase, that he did not at the material time know of the revocation of the power.

(5) Without prejudice to subsection (3) for the purposes of this section knowledge of the revocation of a power of attorney includes knowledge of the occurrence of any event (such as the death of the donor) which has the effect of revoking the power.

(6) In this section “purchaser” and “purchase” have the meanings specified in section 2 of the Conveyance Act 1881 as in force in Gibraltar under the Application of English Law (Application)Act.

(7) This section applies whenever the power of attorney was created but only to acts and transactions after the commencement of this Act.

**Additional protection for stock exchange transactions.**

7. (1) Without prejudice to section 6, where—

- (a) the donee of a power of attorney executes, as transferor, an instrument transferring registered securities; and
- (b) the instrument is executed for the purposes of a stock exchange transaction, it shall be conclusively presumed in favour of the transferee that the power had not been revoked at the date of the instrument if a statutory declaration to that effect is made by the donee of the power on or within three months after that date.

(2) In this section—

“registered securities” means transferable shares, stock, debentures, debenture stock, loan stock, bonds, units of a unit trust scheme, or other shares of the investments subject to the trusts of such a scheme, and other securities of any description, the holders of which are entered in a register (whether maintained in Gibraltar or not);

“stock exchange transaction” means a sale and purchase of securities in which each of the parties is a member of the Stock Exchange, London, or any other stock exchange which is declared by order of the Financial & Development Secretary to be a stock exchange for the purposes of this section, where such member is acting in the ordinary course of his business as such or is acting through the agency of such a member.

## **Execution of instruments by donee of power.**

8.(1) The donee of a power of attorney may, if he thinks fit—

- (a) execute any instrument with his own signature and, where sealing is required, with his own seal, and
- (b) do any other thing in his own name,

by the authority of the donor of the power; and any document executed or thing done in that manner shall be as effective as if executed or done by the donee with the signature and seal, or, as the case may be, in the name, of the donor of the power.

(2) This section applies whenever the power of attorney was created.

**Effect of power in specified form.**

9.(1) Subject to subsection (2), a general power of attorney in the form set out in the Schedule, or in a form to the like effect but expressed to be made under this Act, shall operate to confer—

- (a) on the donee of the power; or
- (b) if there is more than one donee, on the donees acting jointly or acting jointly or severally, as the case may be,

authority to do on behalf of the donor anything which he can lawfully do by an attorney.

(2) This section does not apply to functions which the donor has as a trustee or personal representative or as a tenant for life within the meaning of the Settled Land Act 1882 as in force in Gibraltar under section 3 of the English Law (Application) Act.

10. *Revoked.*

11. *Revoked.*

**Saving as to Trustee Act.**

12. The provisions of this Act are without prejudice to those of section 18 of the Trustees Act (relating to the power to authorize receipts of money by a banker or solicitor).

**Saving as to Land (Titles) Order.**

13. Nothing in this Act shall affect any provision of the Land (Titles) Order under which any power of attorney is registered or required to be registered under the provisions of that Order.



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## Powers of Attorney

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