

## CAYMAN ISLANDS



# POWERS OF ATTORNEY LAW

(1996 Revision)

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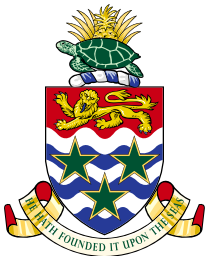
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CAYMAN ISLANDS



POWERS OF ATTORNEY LAW  
(1996 Revision)

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**CAYMAN ISLANDS****POWERS OF ATTORNEY LAW**  
**(1996 Revision)****Short title**

1. This Law may be cited as the *Powers of Attorney Law (1996 Revision)*.

**Execution of powers of attorney**

2. (1) An instrument creating a power of attorney shall be executed as a deed or as an instrument under seal by, or by the direction and in the presence of, the donor of the power.  
(2) Where such an instrument is executed as a deed or as an instrument under seal by a person by the 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 law as to the witnessing of instruments creating powers of attorney and does not affect any law relating to the execution of instruments by bodies corporate.

**Proof of instruments creating powers of attorney**

3. (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 a certificate or certificates signed by the donor of the power or by a Justice of the Peace —
  - (i) at the end that the copy is true and complete copy of the original; and
  - (ii) if the original consists of two or more pages, at the end of each page of the copy 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 copies are made.

### **Powers of attorney given as security**

- 4. (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 donee and third persons where power of attorney is revoked**

- 5. (1) A donee of a power 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 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 it 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 completed within twelve months of the date on which the power came into operation; or
  - (b) that person makes a declaration on oath or affirmation under the *Oaths Law (1996 Revision)* 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) This section applies whenever the power was created but only to acts and transactions after the 7th May, 1979.

### **Execution of instruments, etc., by donee of power of attorney**

- 6.** (1) The donee of a power of attorney may, if he thinks fit —
- (a) execute any instrument with his own signature and, if required, as a deed or other instrument under seal; and
  - (b) do any other thing in his own name,
- by 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 as a deed or instrument under 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.

**Power to delegate trusts by power of attorney**

7. (1) Notwithstanding any rule of law or equity to the contrary, a trustee may, by power of attorney, delegate for a period not exceeding twelve months the execution or exercise of all or any of the trusts, powers or discretions vested in him as trustee either alone or jointly with any other person or persons.
- (2) The persons who may be donees of a power of attorney under this section include a trust corporation but not, unless a trust corporation, the only other co-trustee of the donor of the power.
- (3) An instrument creating a power under this section shall be attested by at least one witness.
- (4) Before or within seven days after giving a power of attorney under this section the donor shall give written notice thereof (specifying the date on which the power comes into operation and its duration, the donee of the power, the reason why the power is given and, where some only are delegated, the trusts, powers and discretions delegated) to —
- (a) each person (other than himself), if any, who under any instrument creating the trust has power (whether alone or jointly) to appoint a new trustee; and
- (b) each of the trustees, if any,
- but failure to comply with this subsection shall not, in favour of the person dealing with the donee of the power, invalidate any act done or instrument executed by the donee.
- (5) The donor of a power of attorney given under this section shall be liable for the acts or defaults of the donee in the same manner as if they were acts or defaults of the donor.
- (6) This section applies to a personal representative and tenant for life as it applies to a trustee except that subsection (4) shall apply as if it required the notice there mentioned to be given —
- (a) in the case of a personal representative to each of the other personal representatives, if any, except any executor who has renounced probate; and
- (b) in the case of a tenant for life, to the trustees of the settlement and to each person, if any, who, together with the person giving the notice, constitutes the tenant for life.
- (7) The fact that it appears from any power of attorney given under this section that in dealing with any stock the donee of a power is acting in the execution of a trust shall not be deemed for any purpose to affect any person, in whose books the stock is inscribed or registered, with any notice of the trust.
- (8) This section applies whenever the trusts, power or discretions in question arise but does not invalidate anything done and in force at the 7th May, 1979.



- (9) In this section —

“stock” and “trust corporation” have the meanings accorded to them in section 2 of the *Trusts Law (1996 Revision)*.

### **Effect of general power in specified form**

8. (1) Subject to subsection (2), a general power of attorney in the form set out in the Schedule, or a form to the like effect but expressed to be made under this Law, 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 severally as the case may be,

authority to do on behalf of the donor anything that 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 Law [Cap. 156]* or to the power to dispose of any interest in immovable property unless such interest is specifically described and the powers with reference thereto are specifically ascertained in the instrument.

### **Saving of section 113 of the Registered Land Law (1995 Revision)**

9. This Law has no application to powers of attorney made under section 113 of the *Registered Land Law (1995 Revision)*.



**SCHEDULE****FORM OF GENERAL POWER OF ATTORNEY**

This general power of attorney is made this       day of       , 19   .  
by A.B. of       .

I appoint C.D. of       ( and E.F.  
of       jointly/jointly and severally) to be my attorney (s)  
in accordance with section 8 of the Powers of Attorney Law (1996 Revision).

In Witness, etc.

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**Publication in consolidated and revised form authorised by the Governor in Council  
this 9th day of April, 1996.**

**Mona N. Banks-Jackson**  
*Clerk of Executive Council*

