

Jersey Law 24/1995

POWERS OF ATTORNEY (JERSEY) LAW 1995

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A LAW to make new provision in relation to powers of attorney, sanctioned by Order of Her Majesty in Council of the

28th day of JUNE 1995

(Registered on the 18th day of August 1995)

STATES OF JERSEY

The 13th day of December 1994

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

ARTICLE 1

Interpretation

(1) In this Law, unless the context otherwise requires –

“registered” means registered in the Public Registry and the expression “registrable” shall be construed accordingly; and

“registrable power of attorney” has the meaning given by paragraph (1) of Article 3.

(2) A reference in this Law to an enactment is a reference to that enactment as amended from time to time and includes a reference to that enactment as extended or applied by or under any other enactment, including any other provision of that enactment.

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(3) A reference in this Law to an Article or Schedule by number only and without further identification is a reference to the Article or Schedule of that number in this Law.

(4) A reference in an Article or other division of this Law to a paragraph or sub-paragraph, by number or letter only and without further identification, is a reference to the paragraph or sub-paragraph of that number or letter in the Article or other division in which the reference occurs.

ARTICLE 2

Powers of attorney generally

(1) This Article is subject to Article 3.

(2) A power of attorney takes effect upon being duly executed, unless the power of attorney states otherwise.

(3) Subject to paragraph (4), a power of attorney, wherever executed, is duly executed if it is signed by the donor, or acknowledged by the donor to have been signed by him, in the presence of one witness who is not a party to the power of attorney.

(4) A body corporate may duly execute a power of attorney in the manner permitted by its articles of association or other internal regulations without any further attestation.

(5) A power of attorney is not capable of being registered otherwise than in accordance with Article 3.

ARTICLE 3

Registrable powers of attorney

(1) A power of attorney which is –

(a) intended to be used to effect a transaction which is required to be registered; or

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- (b) required to be registered by any enactment other than a provision of this Law,

is in this Law referred to as a “registrable power of attorney” and any such power of attorney shall not be exercisable to effect any such transaction or in connexion with the matters to which the enactment relates, as the case may be, until the power has been registered.

(2) A registrable power of attorney shall, subject to paragraph (5), be duly executed if it is signed by the donor, or acknowledged by the donor to have been signed by him, in the presence of one witness who is not a party to the power of attorney and who –

- (a) if the power is executed in the Island, is a Jurat of the Royal Court, a member of the States, an advocate of the Royal Court, a solicitor or a notary public; or
- (b) if the power is executed outside the Island, is one of the persons mentioned in sub-paragraph (a) or one of the persons specified in the First Schedule.

(3) A body corporate may execute a registrable power of attorney in the manner permitted by its articles of association or other internal regulations but such execution shall be equivalent to signature only.

(4) An application to register a registrable power of attorney shall be made to the Royal Court and the power of attorney may be recorded by means of a copy of the original made by photographic, electronic or any other means.

(5) The Royal Court may accept as duly executed a registrable power of attorney which is executed outside the Island and attested by a witness other than a person mentioned in sub-paragraph (a) or (b) of paragraph (2), either –

- (a) if the Court is satisfied that, having regard to the conditions prevailing at the time and place of signature, it was not

possible, without undue delay or expense, for the power of attorney to be attested by one of such persons; or

(b) for such other reason as the Court may think fit.

(6) For the avoidance of doubt, it is declared that a registrable power of attorney is not required to be recorded in any register other than the Public Registry.

(7) The States may, by Regulations, amend the First Schedule.

ARTICLE 4

Proof of powers of attorney

(1) 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 any person mentioned in subparagraph (a) or (b) of paragraph (2) of Article 3, 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 a power of attorney has been made which complies with paragraph (1), the power of attorney may also be proved by a copy of that copy if the further copy itself complies with that

paragraph, taking references in that paragraph to the original as references to the copy from which the further copy is made.

ARTICLE 5

Powers of attorney given ancillary to security

(1) In this Article –

“bankruptcy” includes any insolvency proceedings of a similar nature to bankruptcy in any place outside the Island; and

“security agreement”, “security interest”, “foreign law” and “secured party” have, respectively, the meaning given by the Security Interests (Jersey) Law 1983,¹ which is referred to in this Article as “the 1983 Law”.

(2) Where a power of attorney is expressed to be irrevocable and is given –

- (a) for the purpose of facilitating the exercise of powers of a secured party under the 1983 Law or of powers given pursuant to a security agreement; or
- (b) pursuant to or in connexion with or for the purpose of or ancillary to security governed by foreign law,

then, so long as a security interest under a security agreement to which sub-paragraph (a) applies or such security under foreign law is effective, the power of attorney shall not be revoked by –

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

¹ Volume 1982–1983, page 103, and Volume 1984–1985, pages 195 and 196.

(3) A power of attorney to which paragraph (2) applies may be given to the secured party or the person taking security governed by foreign law and persons deriving rights under them respectively or to some person nominated by the secured party or person taking security governed by foreign law and those persons shall be duly constituted donees of the power of attorney for all the purposes of the power but without prejudice to any right to appoint substitutes given by the power.

(4) This Article shall have effect notwithstanding any enactment or rule of law, in force in the Island or elsewhere, which vests property in any person on death, bankruptcy or any other disability or incapacity and the donee of a power of attorney to which paragraph (2) applies shall be entitled to act thereunder as if the power of attorney had been given also by the person in whom the property so vests.

(5) A person acting under and in accordance with a power of attorney to which paragraph (2) applies shall not be guilty of an offence under Article 23 of the Probate (Jersey) Law 1949.²

ARTICLE 6

Protection of donee and third persons in certain circumstances where power of attorney is revoked

(1) In this Article –

“bankruptcy” includes any insolvency proceedings of a similar nature to bankruptcy in any place outside the Island;

“purchaser” means any person (including a lessee under a lease or a hypothecary creditor or secured party) who otherwise than gratuitously takes any interest in immovables or movables, and “purchase” has a corresponding meaning; and

“secured party” has the meaning given by the Security Interests (Jersey) Law 1983.³

² Tome VII, page 528, and Volume 1990–1991, page 15.

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(2) 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.

(3) 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.

(4) Subject to paragraph (6), in the case of a power of attorney to which paragraph (2) of Article 5 applies, a person dealing with a donee 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 paragraph (3) as having knowledge of the revocation only if he knows that it has been revoked in that manner.

(5) 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 paragraph (3), 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 an affidavit, before or within three months after the completion of the purchase, stating that he did not, at the material time, know of the revocation of the power.

(6) Without prejudice to paragraph (4), for the purposes of this Article 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.

³ Volume 1982–1983, page 103, and Volume 1984–1985, pages 195 and 196.

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(7) This Article applies whenever a power of attorney was created but only to acts or transactions after this Law comes into force.

(8) This Article shall have effect notwithstanding –

(a) Article 22 of the Probate (Jersey) Law 1949;⁴

(b) any enactment or rule of law, in force in the Island or elsewhere, which vests property in any person on death, bankruptcy or other disability or incapacity.

(9) A donee of a power of attorney who acts under and in accordance with paragraph (2) and a person who deals with the donee of a power in the circumstances described in paragraph (3) shall not be guilty of an offence under Article 23 of the Probate (Jersey) Law 1949.⁴

ARTICLE 7

Effect of general power of attorney in specified form

(1) Subject to Articles 2 and 3 and paragraph (2), a general power of attorney in the form set out in the Second Schedule or in a form to the like effect expressed to be made under this Law shall 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 he can lawfully do by an attorney.

(2) This Article does not apply to functions which the donor has as a trustee or personal representative.

⁴ Volume 1990–1991, page 15.

ARTICLE 8

Substitute attorneys

(1) An attorney may, if so authorized in the power appointing him, appoint a substitute by means of a power of attorney, but not otherwise, and the substitute may exercise the powers of the original attorney to the extent authorized in the power appointing him.

(2) A power of attorney which appoints a substitute attorney cannot be used to effect a registrable transaction until both the original power of attorney and the substitute power have been registered.

ARTICLE 9

Revocation and abandonment of power of attorney

(1) Subject to Article 5, Article 10 and paragraph (4), a power of attorney may be revoked or abandoned by a document conforming generally to whichever of the forms in the Third Schedule is applicable and executed in the same manner as was required for the due execution of the instrument creating that power.

(2) The revocation or abandonment of a power of attorney revokes any appointment of a substitute attorney made thereunder.

(3) Any document executed in pursuance of paragraph (1) which relates to a registrable power of attorney which has been registered is of no effect until it has been registered.

(4) In addition to a power of attorney to which paragraph (2) of Article 5 applies, a power of attorney may be expressed to be incapable of revocation by the donor of the power for any period not exceeding one year from the date on which it is granted or the date on which it comes into effect, whichever is the later.

(5) A power of attorney, other than a power to which paragraph (2) of Article 5 applies, which is granted after the coming into force of this Law is revoked by the death, incapacity or bankruptcy of the

donor or, if the donor is a body corporate, by its bankruptcy or dissolution.

ARTICLE 10

Saving

Nothing in this Law –

- (a) shall be taken as overruling any provision of the customary law relating to powers of attorney, except insofar as any such provision is inconsistent with this Law;
- (b) affects the laws and customs of the Island relating to the naming of an attorney without whom the donor may not transact in matters real or personal or relating to the repeal or abandonment of such a power of attorney;
- (c) affects the validity of a power of attorney passed before the Bailiff and two Jurats or registered in the Royal Court before the coming into force of this Law.

ARTICLE 11

Repeals

(1) In the Code of Laws confirmed by Order of His Majesty in Council of the twenty-eighth day of March 1771,⁵ under the title “Rêgitres”, the paragraph beginning with the words “Tous Procureurs” and ending with the words “cent sous d’amende” is repealed.

(2) The Powers of Attorney (Mode of Execution) (Jersey) Law 1962⁶ and the Powers of Attorney (Mode of Execution) (Amendment) (Jersey) Law 1971⁷ are repealed.

⁵ Code of 1771, page 165.

⁶ Volume 1961–1962, page 477.

⁷ Volume 1970–1972, page 193.

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ARTICLE 12

Short title and commencement

This Law may be cited as the Powers of Attorney (Jersey) Law 1995 and shall come into force on such day as the States may by Act appoint.

G.H.C. COPPOCK

Greffier of the States.

*FIRST SCHEDULE***(Article 3(2))****PERSONS WHO MAY ATTEST TO A REGISTRABLE POWER OF ATTORNEY EXECUTED OUTSIDE THE ISLAND**

A judge, justice of the peace, magistrate, mayor, chief officer of any city or municipal corporation, a barrister, solicitor, a lawyer qualified under the legal system of the place of execution, a person authorized to take oaths or affidavits or the equivalent thereof by the law of the Island or the law of the place of execution, a British consular official (or a person for the time being discharging the duties of such an official), or, if the donor of the power is a member of the British armed forces, an officer of those forces authorized to take affidavits.

In this Schedule –

“barrister” means a person who is qualified as a barrister in England and Wales or Northern Ireland or as an advocate in Scotland; and

“solicitor” means a solicitor of the Supreme Court of England and Wales, a solicitor of the Supreme Court of Judicature of Northern Ireland or a solicitor in Scotland.

SECOND SCHEDULE

(Article 7(1))

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
.....
[or C.D. of
..... and
E.F. of
.....
[jointly] [jointly and severally]] to be my attorney[s] in accordance with
Article 7 of the Powers of Attorney (Jersey) Law 199.

In witness whereof etc.

THIRD SCHEDULE

(Article 9(1))

FORM FOR INSTRUMENT OF REVOCATION OF POWER OF ATTORNEY

I, A.B., of
.....,
hereby revoke the power of attorney given by me to
.....
dated the day of, 19.....,
[and registered by the Royal Court of Jersey on the
day of 19 at page of book].

In witness whereof etc.

FORM FOR ABANDONMENT OF POWER OF ATTORNEY

I, A.B., of
.....,
hereby abandon the power of attorney given to me by
.....
dated the day of, 19.....,
[and registered by the Royal Court of Jersey on the
day of 19 at page of book].

In witness whereof etc.