

**REPORT OF THE LAW REFORM COMMITTEE**  
**ON**  
**POWERS OF ATTORNEY**



SINGAPORE ACADEMY OF LAW

**LAW REFORM COMMITTEE**

**SEPTEMBER 2009**

## ***COPYRIGHT NOTICE***

Copyright © 2010, Authors and Singapore Academy of Law

All rights reserved. No part of this publication may be reproduced in any material form without the written permission of the copyright owners except in accordance with the provisions of the Copyright Act or under the express terms of a licence granted by the copyright owners.

### **Authors/Sub-committee Members:**

Mr Charles Lim Aeng Cheng (Chairman)  
Mr T P B Menon  
Mr Tan Peng Chin  
Ms June Celine Low  
Ms Wendy Chang (Secretary)

### **With valuable input from:**

Ms Tan Wen Shan  
Mr Leong Kwang Ian

**ISBN 978-981-08-4273-4**

## **About the Law Reform Committee**

The Law Reform Committee (“LRC”) of the Singapore Academy of Law makes recommendations to the authorities on the need for legislation in any particular area or subject of the law. In addition, the Committee reviews any legislation before Parliament and makes recommendations for amendments to legislation (if any) and for carrying out law reform.

## **About the Report**

See executive summary below.

## **Comments and feedback on this report should be addressed to:**

Law Reform Committee  
Attn: Law Reform Co-ordinator  
Singapore Academy of Law  
1 Supreme Court Lane, Level 6, Singapore 178879  
Tel: +65 6332 4350  
Fax: +65 6334 4940  
Website: [www.sal.org.sg](http://www.sal.org.sg)

## TABLE OF CONTENTS

<b>I.</b>	<b>Executive Summary .....</b>	<b>1</b>
<b>II.</b>	<b>The Law in Singapore on Powers of Attorney .....</b>	<b>3</b>
<b>III.</b>	<b>Legislation in Other Jurisdictions .....</b>	<b>6</b>
A.	UK.....	6
B.	New South Wales.....	7
C.	Tasmania.....	8
D.	British Columbia.....	8
E.	Hong Kong.....	8
F.	Malaysia.....	8
<b>IV.</b>	<b>Execution of Powers of Attorney.....</b>	<b>9</b>
A.	At common law.....	9
B.	UK statutory law.....	10
(1)	Pre-1971.....	11
(2)	Pre-1989 position.....	12
(3)	1989 amendments.....	13
C.	New South Wales.....	13
D.	Tasmania.....	14
E.	British Columbia.....	14
F.	Hong Kong.....	14
G.	Malaysia.....	14
H.	Recommendation for Singapore.....	14
(1)	Execution as a deed.....	14
(2)	Execution by direction and in presence of donor.....	17
<b>V.</b>	<b>Filing of Powers of Attorney.....</b>	<b>18</b>
A.	Current law in Singapore.....	18
(1)	Voluntary deposit under s 48 of the CLPA.....	18
(2)	Filing of trustee powers of attorney abolished.....	19
(3)	No statutory provision for filing of deeds of revocation.....	20
B.	UK.....	21
C.	New South Wales.....	24
D.	Tasmania.....	27
E.	British Columbia.....	29
F.	Hong Kong.....	29
G.	Malaysia.....	29
H.	Singapore.....	30
I.	Recommendation for Singapore.....	31
<b>VI.</b>	<b>Revocation and Protection of Donee and Third Persons .....</b>	<b>33</b>
A.	United Kingdom.....	34
(1)	Protection of donee and third parties.....	34
(2)	Statutory declaration of lack of knowledge of revocation.....	36
B.	New South Wales.....	38
C.	Tasmania.....	40

D.	British Columbia .....	41
E.	Hong Kong .....	41
F.	Malaysia .....	42
G.	Recommendation for Singapore .....	42
<b>VII.</b>	<b>Irrevocable Powers of Attorney .....</b>	<b>42</b>
A.	At common law .....	43
B.	UK statutory law .....	45
	(1) Problems with ss 126 and 127 .....	47
	(a) “Valuable consideration” .....	47
	(b) “In favour of a purchaser” .....	48
	(2) Law Commission’s initial proposal to redraft ss 126 and 127 .....	50
	(3) Law Commission’s recommendation to repeal ss 126 and 127 .....	51
	(a) Section 4(1).....	51
	(b) Section 4(2).....	52
	(c) Section 5(3).....	53
C.	New South Wales .....	54
	(1) Prior to 1983 .....	55
	(2) From 1983 to 2003.....	55
	(3) From 2004 to date.....	56
	(4) Departure from English law.....	56
D.	Tasmania .....	57
E.	Hong Kong .....	57
F.	Malaysia .....	57
G.	Singapore.....	57
H.	Recommendation for Singapore.....	58
<b>VIII.</b>	<b>Instruments Executed or Acts Done by Donee under Power of Attorney.....</b>	<b>59</b>
A.	Singapore.....	60
B.	UK.....	61
C.	New South Wales .....	64
D.	Tasmania .....	64
E.	British Columbia .....	64
F.	Hong Kong .....	65
G.	Malaysia .....	65
<b>IX.</b>	<b>Statutory Form for Powers of Attorney .....</b>	<b>65</b>
A.	UK.....	65
B.	New South Wales .....	68
C.	Tasmania .....	71
D.	British Columbia .....	71
E.	Hong Kong .....	71
F.	Malaysia .....	71
G.	Recommendation for Singapore.....	72
<b>X.</b>	<b>Other Issues .....</b>	<b>73</b>
A.	Statement of duties of donee .....	73
B.	Revocation of powers of attorney by death.....	74
C.	Naming of donee by position or office.....	74

D. Possible overlap between irrevocable powers of attorney and lasting powers of attorney.....	76
E. Criminal sanction.....	78
F. Gratuitous powers of attorney.....	79

## **Annexures**

<b>Annex A. Proposed Powers of Attorney Bill .....</b>	<b>A-1</b>
<b>Annex B. Sample Powers of Attorney filed at the Registry of the Supreme Court, Singapore .....</b>	<b>B-1</b>
<b>Annex C. Comparative Study of Powers of Attorney Acts in the UK, New South Wales, Tasmania, British Columbia, Hong Kong and Malaysia, and Relevant Statutory Provisions in Singapore.....</b>	<b>C-1</b>
<b>Annex D. Comparative Table of the UK Statutory Provisions on Irrevocable Powers of Attorney .....</b>	<b>D-1</b>
<b>Annex E. Comparative Table of the New South Wales Statutory Provisions on Irrevocable Powers of Attorney .....</b>	<b>E-1</b>
<b>Annex F. Statutory Forms for Power of Attorney Prescribed in the UK, New South Wales, Tasmania, British Columbia and Hong Kong .....</b>	<b>F-1</b>

## I. Executive Summary

1 The Law Reform Committee of the Singapore Academy of Law recommends the enactment of a new Powers of Attorney Act in Singapore. This Report sets out the Committee's detailed recommendations and proposes a Powers of Attorney Bill at Annex A. It should be noted that this Bill does not apply to lasting powers of attorney, which are dealt with under the Mental Capacity Act 2008 (Act 22 of 2008).

2 The key provisions of the proposed Powers of Attorney Bill are as follows:

- (a) **Execution of powers of attorney.** Clause 3 of the Bill provides that an instrument creating a power of attorney conferring power on or authorising the donee to execute or deliver a deed on behalf of the donor shall be executed as a deed.<sup>1</sup>
- (b) **Filing of powers of attorney.** Clause 4 of the Bill provides for the voluntary filing in the Registry of the Supreme Court of instruments creating powers of attorney and instruments revoking powers of attorney already filed. Clause 4 does not distinguish between different types of powers of attorney, and is intended to apply to trustee powers of attorney as well. Clause 4(7) provides that an office copy of the instrument filed shall without further evidence constitute sufficient evidence of the contents of the instrument and of the filing thereof in the Registry of the Supreme Court.<sup>2</sup>
- (c) **Proof of contents of instruments creating powers of attorney.** To facilitate proof of powers of attorney, cl 5 of the Bill provides that a photocopy of a power of attorney which is certified as such by a solicitor, commissioner for oaths or notary public shall be sufficient proof of the existence and contents of the power.<sup>3</sup>
- (d) **Revocation of power of attorney and protection of donee and third persons.** Clause 8 of the Bill confers protection on the donee and any third party dealing with the donee where the donee and the third party do not know that the power of attorney has been revoked. Clause 8(1) provides that a donee who acts in pursuance of any power of attorney at a time when it has been revoked shall not by reason of the revocation

---

1 See paras 58–68 of this Report.

2 See paras 112–122 of this Report.

3 See para 123 of this Report.

incur any liability to the donor or to any other person if at that time he did not know that the power had been revoked. Clause 8(2) provides that where a person dealing with the donee did not know of the revocation, the transaction between that person and the donee shall, in favour of that person, be as valid as if the power had then been in existence. Clause 8(4) creates in certain circumstances a conclusive presumption in favour of a purchaser that the third party did not know of the revocation. A purchaser is defined in cl 2 to refer to a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property.<sup>4</sup>

- (e) **Irrevocable powers of attorney.** Clause 6 of the Bill re-enacts s 44 of the Conveyancing and Law of Property Act (Cap 61, 1994 Rev Ed), which provides for the effect of powers of attorney made irrevocable for a fixed time. Clause 7 of the Bill gives legislative effect to powers of attorney expressed to be irrevocable and granted by way of security, whether the interest secured is a proprietary one or an obligation. So long as the interest of the donee exists, the power can be revoked only with his consent and is not revoked by the death, loss of capacity, bankruptcy, winding up or dissolution of the donor. Clause 7 further provides that a power of attorney given to secure a proprietary interest may be given to the person entitled to that interest and his successors in title each of whom is then deemed to be the donee of the power. Accordingly, the transfer of the secured interest will not cause the power to end or become revocable; so long as the interest remains in the successors, the power of attorney needed to protect it will remain irrevocable. Clause 8(3) confers protection on a third party where the power is expressed to be irrevocable and to be given by way of security. In such circumstances, the third party, unless he knows that the power was not in fact given by way of security, is entitled to assume that the power can be revoked only with the concurrence of the donee and is protected if he has no knowledge that it has been so revoked.<sup>5</sup>
- (f) **Instruments executed or acts done by donee under power of attorney.** Clause 9 of the Bill gives legislative effect to the execution of documents and doing of other thing by donees of powers of attorney. Any document executed or thing done by the donee in or with his own name and signature and his own seal, where sealing is required, by the authority of the donor, shall be as effective as if it has been executed or done by the donee in the name of the donor.<sup>6</sup>

---

4 See paras 140, 141, 147–149 and 167 of this Report.

5 See paras 225–230 of this Report.

6 See para 234 of this Report.



- (g) **Repeal of provisions.** To avoid any inconsistency with the Conveyancing and Law of Property Act that may be caused by the introduction of the new Powers of Attorney Act, the Committee recommends that Part X of the Conveyancing and Law of Property Act be repealed.<sup>7</sup>

3 An important issue considered by the Committee is whether a statutory form for powers of attorney should be introduced in Singapore. Having a simple general form will provide guidance. However, as powers of attorney are strictly construed, it is unlikely that such a form will be used in practice. On balance, the Committee decided against prescribing a statutory form for powers of attorney as such a form could possibly be a trap for the unwary.<sup>8</sup>

4 Another important issue considered by the Committee is the possible *overlap between irrevocable powers of attorney and lasting powers of attorney* under the Mental Capacity Act 2008. A lasting power of attorney, though made while the donor has capacity, operates only when the donor no longer has capacity. Where the donor has also granted an irrevocable power of attorney covering the same subject matter as the lasting power of attorney, an overlap between the two types of power of attorney may arise as the irrevocable power of attorney remains valid even when the donor becomes mentally incapable. In the opinion of the Committee, the position should be that the irrevocable power of attorney given should prevail over the lasting power of attorney. However, no express legislative provision is recommended. The position can be made clear in the Explanatory Statement to the Powers of Attorney Bill, if necessary.<sup>9</sup>

5 The Committee also considered *other issues* such as whether it would be desirable to codify the duties of a donee in the new Powers of Attorney Act, whether it would be desirable to make it an offence for a donee to do any act or thing under the power of attorney where he knows of the termination or suspension of his power, and whether gratuitous powers of attorney should be made irrevocable. For these three issues, the Committee is of the view that it would not be desirable to do so.<sup>10</sup>

## II. The Law in Singapore on Powers of Attorney

6 A power of attorney is a formal arrangement by which one person (the donor) gives another person (the donee or attorney) authority to act in his name and on his

---

7 See paras 124, 234, 167 and 225 of this Report.

8 See paras 278–286 of this Report.

9 See paras 300–310 of this Report.

10 See paras 288–291 and 311–316 of this Report.

behalf.<sup>11</sup> It may be completely general, entitling the donee to do almost everything the donor himself could do, or it may be limited to certain defined objects.<sup>12</sup>

7 The practical purpose of a power of attorney is not only to invest the donee with power to act for the donor, but also to provide him with a document defining the extent of his authority, which he can produce as evidence to the third parties with whom he is to deal.<sup>13</sup> The most common reasons for ordinary people using a power of attorney are health problems and overseas travel. Powers of attorney are also widely used in commercial and business transactions.

8 The law relating to powers of attorney forms part of the general law of agency.<sup>14</sup> The common law of agency therefore still applies insofar as it has not been affected by subsequent legislation. In a number of jurisdictions, the law governing powers of attorney is now largely contained in statute. Examples are the UK Powers of Attorney Act 1971, New South Wales Powers of Attorney Act 2003, Tasmania Powers of Attorney Act 2000, British Columbia Power of Attorney Act, Hong Kong Powers of Attorney Ordinance and Malaysia Powers of Attorney Act 1949.

9 In Singapore, the law applicable to powers of attorney is largely the common law. Singapore, unlike the major Commonwealth jurisdictions, does not have a Powers of Attorney Act. However, there are specific statutory provisions that refer to powers of attorney. This has resulted in significant reliance on the common law and some commercial uncertainty, especially in relation to whether one needs to register a power of attorney.

10 The specific provisions on powers of attorney in various pieces of legislation are contained in the Conveyancing and Law of Property Act (Cap 61, 1994 Rev Ed) (“CLPA”), Evidence Act (Cap 97, 1997 Rev Ed), Land Titles Act (Cap 157, 2004 Rev Ed), Registration of Deeds Act (Cap 269, 1989 Rev Ed), Trustees Act (Cap 337, 2005 Rev Ed) and the Rules of Court (Cap 322, R 5, 2006 Rev Ed). These provisions appear to have specific application in the context of the legislation in which they are contained. For example, ss 44 to 48 of the CLPA on powers of attorney appear to be for property transactions as the CLPA is an Act which provides for dealings in property.

---

11 W A Jowitt, *Dictionary of English Law* (1959) defines a power of attorney as “a formal instrument by which one person empowers another to represent him, or act in his stead for certain purposes”. See *Bowstead & Reynolds on Agency* (18th Ed, 2006) at p 56, para 2-039.

12 T M Aldridge, *Powers of Attorney* (10th Ed, 2007) at para 1-01.

13 T M Aldridge, *Powers of Attorney* (10th Ed, 2007) at para 1-01.

14 See also J F Josling, *Powers of Attorney* (4th Ed, 1976) at p 8, where it is stated that “[a]lthough the law relating to powers of attorney is usually (and no doubt correctly) dealt with by text writers as a branch of the general law of agency, it displays many special features, and may be said to stray, in particular respects, towards trust law. Lindley LJ said of a power of attorney in *Chatenay v Brazilian Submarine Telegraph Co* [1891] 1 QB 79 at 85 that it was a ‘one-sided document, an instrument which expresses the meaning of the person who makes it, but is not in any sense a contract’”.

11 It is noted that the provisions on powers of attorney in the CLPA are modelled after the provisions in the UK Law of Property Act 1925 (c 20). The provisions on powers of attorney in the UK Law of Property Act 1925 have since been replaced by the UK Powers of Attorney Act 1971 (c 27) as a result of a comprehensive review by the Law Commission for England and Wales, but in Singapore, no such review has been undertaken.

12 The New South Wales Law Reform Commission had also undertaken a review of the law relating to powers of attorney, which led to legislative amendments. The review was prompted by the introduction in the UK of the Powers of Attorney Act 1971.

13 At the request of the Chairperson of the Law Reform Committee of the Singapore Academy of Law, a Law Reform Sub-Committee<sup>15</sup> was formed in March 2007 to study the feasibility of enacting a Powers of Attorney Act in Singapore.

14 The Committee recommends the enactment of a new Powers of Attorney Act in Singapore. The new Powers of Attorney Act will consolidate the various provisions relating to powers of attorney into one piece of legislation. This has the benefit of making the law easily accessible to all. The provisions in the new Powers of Attorney Act will have general application. The powers of attorney provisions in the CLPA, for example, will therefore be transferred to the new Powers of Attorney Act. This Report contains the Committee's detailed recommendations. The proposed Powers of Attorney Bill is at Annex A.

15 Alternatively, instead of enacting a new Powers of Attorney Act, the Committee has considered whether the general provisions on powers of attorney may be provided in the Civil Law Act (Cap 43, 1999 Rev Ed). As the Civil Law Act is of general application, consolidating the powers of attorney provisions in the Civil Law Act would achieve the same objective as having a new Powers of Attorney Act. The Committee is of the view that this would be a feasible option and notes that this would be a change from the current position of having the provisions on powers of attorney in specific legislation, giving rise to the concern that the provisions have specific application in the context of the legislation in which they are contained.

16 In its study, the Committee looked at some samples of powers of attorney that have been filed at the Registry of the Supreme Court, Singapore. These samples were kindly extended to the Committee by the Supreme Court and are at Annex B. The Committee would like to record its deepest appreciation for the assistance rendered by the Supreme Court.

---

15 The list of members of the Sub-Committee can be found at p ii of this Report.

17 In its study, the Committee also undertook a comparative review of the Powers of Attorney Acts in the UK, Australia (New South Wales and Tasmania), Canada (British Columbia), Hong Kong and Malaysia. Annex C sets out the relevant statutory provisions in these jurisdictions.

18 It should be noted that the Committee's study is limited to ordinary powers of attorney. The scope of the proposed Powers of Attorney Act does not cover enduring or lasting powers of attorney. Lasting powers of attorney was the subject of a separate study undertaken by the Ministry of Community Development, Youth and Sports, which resulted in the enactment of the Mental Capacity Act 2008.<sup>16</sup>

### III. Legislation in Other Jurisdictions

19 The Committee studied the powers of attorney legislation in other common law jurisdictions such as the UK, Australia (New South Wales and Tasmania), Canada (British Columbia), Hong Kong and Malaysia. A comparative table of the statutory provisions of these jurisdictions as well as the existing provisions on powers of attorney in Singapore is at Annex C.

#### A. UK

20 In the UK, the statute that deals comprehensively with powers of attorney is the Powers of Attorney Act 1971 ("1971 Act").<sup>17</sup> The law governing the powers of trustees to grant powers of attorney is dealt with in s 25 of the Trustee Act 1925.<sup>18</sup>

21 The 1971 Act implements the recommendations of the Law Commission for England and Wales in its *Report on Powers of Attorney* dated September 1970 (Law Com No 30). The 1971 Act is a new Act which incorporates in revised form all the relevant statutory provisions relating to powers of attorney.

22 Before the 1971 Act, statutory provisions regarding powers of attorney were contained in ss 74(3) to 74(5) and ss 123 to 129 of the Law of Property Act 1925,<sup>19</sup> and s 219 of the Supreme Court of Judicature (Consolidation) Act 1925 (c 49). The provisions in the Law of Property Act 1925 and Supreme Court of Judicature (Consolidation) Act 1925 were repealed by the 1971 Act.

---

16 The Mental Capacity Act 2008 was passed by Parliament on 15 September 2008 and assented to by the President on 2 October 2008. At the time of writing this report, the Act has not come into operation.

17 1971 (c 27) (UK).

18 1925 (c 19) (UK).

19 1925 (c 20) (UK).

23 The English Law Commission had undertaken a comprehensive review of the statutory provisions relating to powers of attorney and concluded that the position was unsatisfactory and that the statutory provisions were in need of clarification and reform. The English Law Commission's examination on this subject was initially prompted by a memorandum received from the Holborn Law Society in which they suggested certain changes in the requirements to be satisfied on filing a power of attorney in the Central Office of the Supreme Court. Their suggestions were substantially met by amendments, which the English Law Commission proposed, to the Rules of the Supreme Court, which came into operation on 1 July 1967. However, the English Law Commission's examination of the statutory provisions revealed that a comprehensive review of this subject was necessary.<sup>20</sup>

### **B. New South Wales**

24 In New South Wales, powers of attorney are dealt with in the Powers of Attorney Act 2003.

25 Prior to the enactment of this Act, the law on powers of attorney was contained in Pt 16 of the Conveyancing Act 1919.<sup>21</sup> The 2003 Act repealed the provisions of Pt 16 of the Conveyancing Act 1919 and re-enacted them with some modifications.<sup>22</sup> As explained by the Minister in his Second Reading Speech on the Powers of Attorney Bill 2003, the changes made were aimed at remedying certain problems that have arisen in practice. These problems included uncertainty as to the scope of an attorney's role under a power of attorney and the complex requirements for executing a protected power of attorney (now called an enduring power of attorney). These and other problems were identified in the course of a lengthy consultation process that began in 1999. Consultations were held with a wide range of groups, including the Law Society, the Committee on the Ageing, the Public Trustee, a number of Commonwealth and State Departments and some individual solicitors.<sup>23</sup>

26 Earlier in 1974, the New South Wales Law Reform Commission had undertaken a review of the law relating to powers of attorney. The review was prompted by the

---

20 Law Commission for England and Wales, *Report on Powers of Attorney* (Law Com No 30, September 1970) at para 1.

21 The Powers of Attorney Act 2003 is generally not regarded by practitioners as a major change in the law on powers of attorney and merely restates in a more organised fashion the existing statutory law for powers of attorney in New South Wales. The noteworthy changes relate to the form of a power of attorney, gifts and taking of benefits by attorneys and enduring powers of attorney.

22 See Second Reading Speech of Powers of Attorney Bill 2003 by the Hon John Hatzistergos, Minister for Justice and Minister Assisting the Premier on Citizenship, 15 October 2003, Legislative Council, Parliament of New South Wales. See also the Report of the Legislation Review Committee of the Parliament of New South Wales on the Powers of Attorney Bill 2003, *Legislation Review Digest* (No 2 of 2003, 16 September 2003) at pp 14–16.

23 Report of the Legislation Review Committee of the Parliament of New South Wales on the Powers of Attorney Bill 2003, *Legislation Review Digest* (No 2 of 2003, 16 September 2003) at para 2.

passing in the UK of the 1971 Act in accordance with the recommendations made by the English Law Commission. Examination of the UK 1971 Act had led to a suggestion that corresponding reforms in New South Wales might be desirable, and accordingly, the Attorney General of New South Wales made the reference to the Law Reform Commission to review the law. The review resulted in recommendations to amend the Conveyancing Act 1919 in so far as it related to powers of attorney. At that time, the Law Reform Commission did not consider that a special Powers of Attorney Act was called for in New South Wales. The Law Reform Commission's proposed amendments to the Conveyancing Act 1919 were eventually enacted in 1983.<sup>24</sup>

### ***C. Tasmania***

27 The relevant legislation in Tasmania is the Powers of Attorney Act 2000. It repealed the Powers of Attorney Act 1934 and came into operation on 4 April 2001. At the second reading of the Powers of Attorney Bill 2000, the Tasmanian Government explained that although the Powers of Attorney Act 1934 was quite a simple and modern Act when it was written, over the years it had been the subject of substantial amendments. If further significant amendments had to be made to this relatively short Act, the Government felt that it ought to be rewritten in a coherent way and in simple, plain modern English.<sup>25</sup>

### ***D. British Columbia***

28 The relevant statute in British Columbia is the Power of Attorney Act. It came into operation in 1996.

### ***E. Hong Kong***

29 In Hong Kong, the law relating to powers of attorney is contained in the Powers of Attorney Ordinance which came into operation on 1 October 1972. It is modelled after the UK 1971 Act.

### ***F. Malaysia***

30 In Malaysia, the relevant statute is the Powers of Attorney Act 1949.

31 It should be noted that this Report does not take into account the amendments to the New South Wales Powers of Attorney Act 2003 made by the Trustee and Guardian

---

24 By way of the Conveyancing (Powers of Attorney) Amendment Act 1983.

25 Second Reading speech by Mr Parkinson (Wellington, Deputy Leader of the Government in the Council), Legislative Council (Upper House), Parliament of Tasmania, 24 October 2000.

Act 2009, and the amendments to the Tasmania Powers of Attorney Act 2000 made by the Powers of Attorney (Amendment) Act 2008. The amendments were introduced after the Committee had completed its study.

#### **IV. Execution of Powers of Attorney**

32 Clause 3 of the proposed Powers of Attorney Bill at Annex A provides for the execution of a power of attorney, as follows:

##### **Execution of instruments creating powers of attorney**

3.—(1) An instrument creating a power of attorney conferring power on or authorising the donee to execute or deliver a deed on behalf of the donor shall be executed as a deed.

(2) This section is not in derogation of any rule of law relating to the execution of instruments creating powers of attorney.

33 Clause 3 seeks to codify the common law position on the execution of instruments creating powers of attorney. This provision is for certainty and the avoidance of doubt. Presently, there is no statutory provision in Singapore which provides for the execution of powers of attorney generally. The applicable law in Singapore on the execution of powers of attorney is the common law.

##### **A. At common law**

34 At common law, it is not necessary for an instrument granting a power of attorney to be a deed,<sup>26</sup> but authority to execute a deed or to deliver<sup>27</sup> a deed on behalf of another has to be given by deed. In Singapore, the law requires a deed in relation to certain types of transactions, in particular, in the context of land, for “a conveyance of any estate or interest in land other than a lease for a period not exceeding seven years at a rack rent”.<sup>28</sup> The power of a donee to execute such a conveyance would therefore have to be given by deed.

35 It is noted that there is currently no statutory definition<sup>29</sup> of a power of attorney, and it has been opined that the distinction between a power of attorney and other forms

---

26 *Bowstead & Reynolds on Agency* (18th Ed, 2006) at p 56, para 2-039.

27 It is noted that in the UK, s 1(1)(c) of the Law of Property (Miscellaneous Provisions) Act 1989 (c 34) abolished the rule that authority *to deliver* a deed on behalf of another must itself be given by deed. This is not the case for Singapore.

28 *Conveyancing and Law of Property Act* (Cap 61, 1994 Rev Ed) s 53.

29 It is noted that in Singapore, s 146 of the Land Titles Act (Cap 157, 2004 Rev Ed) defines “attorney” and “power” for the purposes of Pt XVI of the Act as follows:

*(cont'd on the next page)*

of agency appointment is not always easy to draw.<sup>30</sup> A power of attorney is a document by which one person (the donor) gives another person (the donee) the power to act on his behalf and in his name. It may be a general power or limited to certain defined purposes.

36 In its study, the Committee considered whether a power of attorney should be granted by deed, following the position in the UK 1971 Act.

### **B. UK statutory law**

37 Section 1(1) of the UK 1971 Act provides that an instrument creating a power of attorney must be executed as a deed.

38 By execution “as a deed”, the English Law Commission explained that the intention is to emphasise the distinction between deeds and other instruments. In the UK, an individual now executes a deed by signing the instrument in the presence of a witness who attests the signature, and by delivery of the instrument as a deed. The former requirement for sealing has been abolished by the Law of Property (Miscellaneous Provisions) Act 1989,<sup>31</sup> but attestation is now mandatory.<sup>32</sup>

39 It is noted that s 1(1) of the UK 1971 Act as it stands today is the result of amendments made thereto on 27 July 1989 by the Law of Property (Miscellaneous Provisions) Act 1989 (c 34).

40 Section 1(2) of the UK 1971 Act has been repealed by the Law of Property (Miscellaneous Provisions) Act 1989.<sup>33</sup>

41 Section 1(3) of the UK 1971 Act provides that the section is without prejudice to the requirements of any other Act as to the witnessing of instruments creating powers of attorney. One such requirement is in relation to powers of attorney granted by trustees under s 25 of the Trustees Act 1925 as amended by s 9 of the 1971 Act.

---

In this Part, ‘attorney’ means any person appointed by an instrument under seal to act as the agent for or on behalf of a principal in relation to transactions with registered land, whether the agent is called attorney, receiver, broker, factor or otherwise and, where the context admits, ‘power’ means the instrument by which an attorney is appointed.

30 Law Commission for England and Wales, *The Execution of Deeds and Documents on behalf of Bodies Corporate* (Consultation Paper No 143, 1996) at para 8.3.

31 1989 (c 34) (UK).

32 Law Commission for England and Wales, *The Execution of Deeds and Documents on behalf of Bodies Corporate* (Consultation Paper No 143, 1996) at para 3.6. See also a discussion of the relevant legislative changes made by the Law of Property (Miscellaneous Provisions) Act 1989 at paras 47 and 48.

33 For further details, see paras 49 and 50.



Section 1(3) also makes it clear that the section does not affect the rules relating to execution by corporations.

42 The paragraphs below set out the legislative development and history of s 1 of the 1971 Act.

(1) *Pre-1971*

43 The general rule in s 1(1) was new in 1971 and is unqualified.<sup>34</sup>

44 Before 1971, a power of attorney had to be a deed under seal if it authorised the donee to execute a deed on the donor's behalf or if it was giving more general authority which would necessarily involve that.<sup>35</sup> Similarly, a power to deliver a deed already signed and sealed had to be under seal.<sup>36</sup> However, a verbal authority sufficed to allow a donee to execute a deed in the donor's presence.<sup>37</sup>

45 In its Working Paper on *Powers of Attorney* published in 1967, the English Law Commission had drawn attention to the fact that it was somewhat obscure whether, under the law existing then, a power of attorney must be under seal unless the attorney was to be empowered to execute documents under seal.<sup>38</sup> During the public consultation, it was found that most of the consultants favoured the view that so long as the formality of sealing is retained as part of the English law, a power of attorney was essentially the sort of instrument which would require that formality. The English Law Commission agreed with that view and added that a power of attorney is a grant rather than an agreement and the grant should therefore be made by deed. In the English Law Commission's words:<sup>39</sup>

Even if sealing is abolished as essential for contracts not made for valuable consideration, it will presumably remain as essential for grants, as opposed to agreements. As we see it, a power of attorney is a grant rather than an agreement and the grant should therefore be made by deed.

---

34 Although this general rule is unqualified, it seems to be accepted that it does not extend to other documents in the nature of powers of attorney that are expressly authorised, for instance, delegation of powers by charitable trustees, appointment of an agent to sign a contract on behalf of a company, or a proxy granted by a shareholder in a company. This may be because these other documents are not regarded as powers of attorney for the purposes of the 1971 Act. That Act contains no definition of the term. See T M Aldridge, *Powers of Attorney* (9th Ed, 2000) at para 6.01.

35 *Berkeley v Hardy* (1826) 5 B & C 355.

36 *Windsor Refrigerator Co Ltd v Branch Nominees Ltd* [1961] Ch 88; reversed on other grounds.

37 *R v Longnor (Inhabitants)* (1833) 4 B & Ad 647. See T M Aldridge, *Powers of Attorney* (9th Ed, 2000) at para 6.02.

38 Law Commission for England and Wales, *Working Paper on Powers of Attorney* (Published Working Paper No 11, June 1967) at paras 57–59.

39 Law Commission for England and Wales, *Report on Powers of Attorney* (Law Com No 30, September 1970) at para 40.

46 Hence, the English Law Commission recommended having a statutory provision to provide that an instrument granting a power of attorney shall be executed under seal. This was implemented by way of s 1(1) of the 1971 Act (as it stood prior to the amendments thereto in 1989).

(2) *Pre-1989 position*

47 In 1989, amendments were made to the 1971 Act by the Law of Property (Miscellaneous Provisions) Act 1989. These amendments were a result of legislative changes to the law on the execution of deeds by individuals. In particular, it removed the need for individuals to execute deeds under seal.

48 Prior to the amendments in 1989, s 1(1) of the 1971 Act provided that a power of attorney must be signed and sealed by the donor of the power, or may be so signed and sealed by the direction and in the presence of the donor. In the latter event where the power is executed by another on the donor's direction, the repealed s 1(2) required the instrument to be attested by two witnesses. The effect of this was to extend to powers of attorney the provision applicable to wills and to permit the physically disabled to execute powers of attorney.<sup>40</sup> This provision arose from feedback given by The Law Society during the public consultation on the English Law Commission's Working Paper on *Powers of Attorney*. As stated by the English Law Commission:<sup>41</sup>

There is, however, one matter, mentioned in paragraphs 26 and 27 of The Law Society's Memorandum, which it is appropriate to deal with here. It relates to the person who is of perfectly sound mind but physically incapable of executing any document because of paralysis or other serious bodily injury. Section 9 of the Wills Act 1837 has long enabled a person to execute a will by having it signed for him in his presence and by his direction in the presence of attesting witnesses. But at present there is no power enabling a power of attorney to be executed in this way, with the result that a patient who, for example, is in an iron lung, cannot give a power of attorney just when he needs to. We accordingly recommend that it should be provided that a power of attorney may be effectively executed by some other person in the presence of the donor and by his direction and in the presence of two or more attesting witnesses. In effect this will apply the rule as that in the Wills Act and enable the patient to take steps to administer his affairs during his life and not merely after his death.

---

40 Law Commission for England and Wales, *Report on Powers of Attorney* (Law Com No 30, September 1970) at para 28.

41 Law Commission for England and Wales, *Report on Powers of Attorney* (Law Com No 30, September 1970) at para 28.

(3) *1989 amendments*

49 The UK Law of Property (Miscellaneous Provisions) Act 1989 made legislative changes to the law on the execution of deeds by individuals. In particular, it removed the need for individuals to execute deeds under seal. Section 1(1)(b) of the UK Law of Property (Miscellaneous Provisions) Act 1989 abolishes any rule of law which requires a seal for the valid execution of an instrument as a deed by an individual. Section 1(3) of the UK Law of Property (Miscellaneous Provisions) Act 1989 requires only signature and delivery for the valid execution of an instrument as a deed by an individual. Section 1(3) provides:

- (3) An instrument is validly executed as a deed by an individual if, and only if—
- (a) it is signed—
    - (i) by him in the presence of a witness who attests the signature; or
    - (ii) at his direction and in his presence and the presence of two witnesses who each attest the signature; and
  - (b) it is delivered as a deed by him or a person authorised to do so on his behalf.

50 Consequential amendments were made to the 1971 Act by amending s 1(1) and repealing s 1(2).<sup>42</sup>

51 The Committee also studied the position on the execution of instruments creating powers of attorney in other jurisdictions.

**C. *New South Wales***

52 In New South Wales, there is no statutory provision in the Powers of Attorney Act 2003 on the execution of instruments creating powers of attorney. Therefore, there is no statutory requirement that such an instrument must be executed as a deed.

53 The New South Wales Law Reform Commission in its *Working Paper on Powers of Attorney*<sup>43</sup> had considered the UK statutory provisions (pre-1989 position) on the issue but expressed the view that statutory intervention was not warranted as the common law still ensured the validity of a deed and of any other document, signed by one person for another.

---

42 Law of Property (Miscellaneous Provisions) Act 1989 (c 34) (UK) Sched 1 para 6.

43 Report 18, 1974.

**D. Tasmania**

54 In Tasmania, s 18 of the Powers of Attorney Act 2000 provides for a power of attorney (other than an enduring power of attorney) to be made by deed or in accordance with any of the statutory forms provided in Schedule 1. Section 49 provides that a power of attorney made in accordance with one of the statutory forms is as valid and effectual to all intents and purposes as if made by deed duly executed and acknowledged.

**E. British Columbia**

55 In British Columbia, there is no statutory provision in the Power of Attorney Act on the execution of instruments creating powers of attorney.

**F. Hong Kong**

56 In Hong Kong, s 2(1) of the Powers of Attorney Ordinance provides that instruments creating powers of attorney must be signed and sealed by, or by direction and in the presence of, the donor. Section 2(1) is *in pari materia* with the pre-1989 s 1(1) of the 1971 Act.

**G. Malaysia**

57 In Malaysia, the Powers of Attorney Act 1949 does not provide for the execution of powers of attorney as a deed.

**H. Recommendation for Singapore**

*(1) Execution as a deed*

58 There is currently no statutory provision in Singapore which provides for the execution of powers of attorney generally. It is noted that the Third Schedule to the Trustees Act requires the Form of Power of Attorney under s 27(5) of the Trustees Act to be executed as a deed.

59 It is further noted that the applicable law in Singapore on the execution of powers of attorney is the common law and a provision along the lines of s 1 of the UK 1971 Act would be a new legal requirement as the common law does not require all powers of attorney to be granted by deed.

60 In its review, the Committee received industry feedback that currently, donors are not entirely certain whether the powers that they grant have to be granted by deed. In many cases, powers of attorney would be executed as deeds, just to err on the side of caution. It would therefore be useful if the new Powers of Attorney Act could state that a deed is necessary, as in the UK 1971 Act.

61 On the other hand, it is not clear from the UK 1971 Act whether a power of attorney not executed by deed becomes invalid as a consequence. The UK 1971 Act does not state what is to happen if a power of attorney is executed other than by deed. The Committee was concerned that there may be adverse effects if such appointments are regarded as invalid. However, *Bowstead & Reynolds on Agency*<sup>44</sup> has commented that where an appointment purports to be by deed, and the document is for some reason ineffective as a deed, the appointment may sometimes be valid as an appointment in writing.

62 Further, the Committee was informed that there are some cases where the normal practice is not to execute a deed. In such situations, the new legal requirement for a deed would cause inconvenience. For example, in the area of trade marks registration, proprietors of trade marks which are foreign companies appoint trade mark agents to apply for trade mark registration in Singapore on their behalf. In practice, trade mark agents are appointed by way of letters of authorisation, which, as the Committee understands, are effectively and in substance powers of attorney. These are not executed as deeds.

63 Similarly, before a foreign corporation can carry on fund management business in Singapore, it has to apply for a Capital Markets Services Licence with the Monetary Authority of Singapore. The foreign corporation will appoint an agent in Singapore by way of a power of attorney for the purpose of applying for the licence. The Committee was informed that the instrument granting the power of attorney is not executed as a deed in practice.

64 To address the issue of practical inconvenience that may arise with the legal requirement for a deed, the Committee considered whether it would be desirable to also define “power of attorney” in the proposed Powers of Attorney Act. The definition of power of attorney can restrict the scope of the power of attorney to the grant of specific types of powers where the grant of these powers will require a deed to be executed. The definition will exclude the appointment of agents in the examples given above. However, the Committee found difficulty with this approach as it would not be possible to specify all the powers, the grant of which would require a deed to be executed.

65 The Committee, therefore, considered three options:

- (a) expressly provide in the proposed Powers of Attorney Act that instruments creating powers of attorney must be executed as deeds;

---

44 *Bowstead & Reynolds on Agency* (18th Ed, 2006) at para 2-039.

- (b) no express provision, but instead rely on the common law position to determine whether a deed is necessary; and
- (c) express provision to codify the common law position.

66 The Committee expressed concern with having an express provision requiring an instrument creating a power of attorney to be executed as a deed by the donor of the power. Such a provision would have far reaching implications. In particular, it would result in the importation of the approach of strictly construing deeds into the interpretation of powers of attorney. The practice of using powers of attorney in commercial settings may be impeded by such an approach. Further, the requirement of execution as a deed may affect bank documentation as there are often powers of attorney clauses in such documents. The requirement may also create an additional problem when one deals with documents from civil law jurisdictions as the concept of deed does not exist in those jurisdictions.

67 The Committee agreed that while a power of attorney may be executed as a deed for reasons of certainty, this should not be mandatory except in certain circumscribed situations such as where it involved land. The Committee agreed that there could be an express provision in the proposed Powers of Attorney Act to provide for execution of powers of attorney, but such a provision should be declaratory in nature and not intended to change the law.

68 It should be noted that a provision such as the proposed cl 3 may not be very useful in practice. The conversion of land to the Torrens system has resulted in significantly less deeds being required and executed. Deeds may still be required for certain transactions, for example, when there is no consideration. However, in the case of land, there are hardly any deeds lodged at the Registry of Deeds of the Singapore Land Authority. This is probably because the transfer of an estate or interest in land in most cases is registered under the Torrens system under the Land Titles Act. The old common law system of land registration under the Registration of Deeds Act is hardly used today.<sup>45</sup> It should be further noted that an Instrument of Transfer<sup>46</sup> under the Torrens system need not be executed as a deed.

---

45 Under common law, interest in land is passed by the act of the parties, that is, when a deed is signed, sealed and delivered. The Registry of Deeds, which administers the Registration of Deeds Act and its rules, keeps a record of deeds lodged against land held under the old common law system of land registration. As noted at the website of the Singapore Land Authority <<http://www.sla.gov.sg>>, today, there are hardly any deeds lodged at the Registry of Deeds. Under the Registration of Deeds Act, it is not compulsory for owners of land to register the deeds at the Registry of Deeds. However, most deeds are registered in the Registry of Deeds as it offers priority to a claimant under a deed as against other potential claimants to the land. Failure to register a deed under the Registry of Deeds means that it cannot be produced in a court of law as evidence of title to the land.

46 See, for example, Form 19, which is an approved form under the Land Titles Rules (Cap 157, R1, 1999 Rev Ed) for an Instrument of Transfer.

(2) *Execution by direction and in presence of donor*

69 Section 1(1) of the UK 1971 Act (as it stood prior to the amendments thereto in 1989) also provides for the execution of a power of attorney by the direction and in the presence of the donor. In such a case, s 1(2) requires the instrument to be attested by two witnesses. The English Law Commission had recommended this provision to permit the physically disabled to execute powers of attorney and to extend to powers of attorney the same rule concerning signature for another person under the Wills Act.

70 The New South Wales Commission had considered the English provision, but decided not to adopt it as “the common law still ensures the validity of a deed and of any other document, signed by one person for another, and that statutory intervention is not warranted.” At common law, a signature duly authorised by a person affixed to a document by another person is the signature of the person giving the authority. Despite strong views to the contrary expressed by two commentators, the New South Wales Commission decided against codifying the common law position on the signature of documents by physically disabled persons and felt that the common law should stand.

71 The Committee agreed with the views of the New South Wales Commission. Further, the Committee noted that this issue is currently being studied by the Legislation and Law Reform and Revision Division (“LLRD”) of the Attorney-General’s Chambers of Singapore in its project on instruments formalities. The LLRD is studying the feasibility of the abolition of the sealing requirement as in the UK and providing for the valid execution of an instrument as a deed in a new Instruments Formalities Bill, along the lines of s 1 of the UK Law of Property (Miscellaneous Provisions) Act 1989.<sup>47</sup> In the circumstances, the Committee makes no recommendation in the proposed Powers of Attorney Act on the execution of a power of attorney by the direction and in the presence of the donor.

---

47 Section 1(3) of the Law of Property (Miscellaneous Provisions) Act 1989 (c 34) (UK) states:

- (3) An instrument is validly executed as a deed by an individual if, and only if—
- (a) it is signed—
    - (i) by him in the presence of a witness who attests the signature; or
    - (ii) at his direction and in his presence and the presence of two witnesses who each attest the signature; and
  - (b) it is delivered as a deed by him or a person authorised to do so on his behalf.

Section 1(4) provides that in sub-section (3), “sign”, in relation to an instrument, includes making one’s mark on the instrument and “signature” is to be construed accordingly.

## V. Filing of Powers of Attorney

72 Clause 4 of the proposed Powers of Attorney Bill at Annex A provides for the voluntary filing of powers of attorney in the Registry of the Supreme Court and the extension of the filing system to include all forms of powers of attorney.

73 Clause 4 further provides for the voluntary filing of instruments revoking powers of attorney and that the power shall be deemed to have been duly revoked as from the date of filing of the instrument of revocation.

### A. Current law in Singapore

#### (1) Voluntary deposit under s 48 of the CLPA

74 In Singapore, there is presently a voluntary system of filing instruments creating powers of attorney at the Registry of the Supreme Court. Section 48(1) of the CLPA provides that an instrument creating a power of attorney *may* be deposited in the Registry of the Supreme Court. The subsection further provides that execution of such an instrument must have been verified by affidavit, statutory declaration, notarial certificate or other sufficient evidence, or by a true copy certified by the Registrar, Deputy Registrar or Assistant Registrar of the Supreme Court. If the instrument is registered in Malaysia, it must be verified by an office copy thereof. The affidavit or declaration, or the true copy or office copy of the instrument, as the case may be, must be deposited with the instrument or copy of the instrument. Order 60 rule 6 of the Rules of Court provides for the manner in which instruments creating powers of attorney may be deposited in the Registry of the Supreme Court under s 48 of the CLPA.

75 Notwithstanding that filing of instruments creating powers of attorney is not mandatory under the CLPA, the Committee observed that powers of attorney relating to registered land transactions are always filed in practice. This is because the Registrar of Titles, before registering any instrument executed by an attorney, would require the power of attorney or a true copy thereof to be deposited in the Registry of the Supreme Court. The Registrar of Titles may so require under s 147(3)(a) of the Land Titles Act.<sup>48</sup> Further, s 10 of the Registration of Deeds Act provides that where any assurance or *caveat* has been executed by any agent or representative duly authorised by a power of attorney, the Registrar of Deeds may require the power of attorney to be deposited in the Registry of the Supreme Court before the assurance or caveat is provisionally registered.

---

48 Alternatively, under s 147(3)(b) of the Land Titles Act, the Registrar may require that an office copy of the power of attorney delivered out of the Supreme Court be lodged in the Land Titles Registry for inspection or for permanent record.



76 The advantage of filing is to facilitate proof of the contents of the power of attorney filed. Under s 48(5) of the CLPA, an office copy of an instrument deposited in the Registry of the Supreme Court is without further proof sufficient evidence of the contents of the instrument and of the deposit thereof in the Registry.

77 It is not certain whether filing would facilitate proof of the execution of the power of attorney. There is nothing in the CLPA or the Land Titles Act which expressly states that the filing of a power of attorney is proof that the power of attorney is validly executed. Section 147(2) of the Land Titles Act merely provides that when any instrument executed by an attorney is lodged in the Land Titles Registry for registration, the Registrar of Titles does not require further proof of execution of the power of attorney where the power of attorney has been deposited in the Registry of the Supreme Court under s 48 of the CLPA. Under O 60 rr 6 and 7 of the Rules of Court, the execution of the power of attorney is required to be verified in accordance with the rules stated therein before it is filed. However, in the absence of an express statutory provision, this does not mean that the filing of a power of attorney would constitute evidence that the power of attorney filed is in law validly executed.

78 It is noted that under s 8(2) of the CLPA, the purchaser on a sale under a contract providing for the execution of the conveyance by an attorney under a power of attorney is entitled to require the power of attorney to be deposited by the vendor. Under s 8(3), on the execution of a reconveyance or a transfer or discharge of a mortgage by an attorney under a power of attorney, the mortgagor is also entitled to require the power of attorney to be deposited.

79 From the experience of the Registry of the Supreme Court, it is not only powers of attorney relating to registered land transactions that are deposited. Powers of attorney relating to personal property are also presented for deposit. The Registry of the Supreme Court accepts for deposit any power of attorney that deals with “property” as defined in the CLPA, regardless of whether that property is real or personal property. “Property” is defined in s 2 of the CLPA as follows:

‘property’ includes real and personal property and any estate in any property, real or personal, and any debt and any thing in action, and any other right or interest in the nature of property, whether in possession or not.

(2) *Filing of trustee powers of attorney abolished*

80 Section 27 of the Trustees Act<sup>49</sup> empowers a trustee to delegate his functions by power of attorney. Section 27 as it stands today does not provide for the filing of trustee powers of attorney. However, prior to the amendments to the Trustees Act in 2004,<sup>50</sup>

---

49 Cap 337, 2005 Rev Ed.

50 The amendments were made *vide* the Trustees (Amendment) Act 2004 (Act 45 of 2004). Section 16 of the Trustees (Amendment) Act 2004 had repealed s 27 and re-enacted it with substantial changes.

the former s 27(4) had provided for the mandatory deposit of trustee powers of attorney in the Registry of the Supreme Court. Section 27(4) had stated:

(4) The power of attorney shall be attested by at least one witness, and *shall be deposited* in the Registry of the Supreme Court within 10 days after the execution thereof, or where not executed in Singapore within 10 days after its receipt in Singapore, with a statutory declaration by the donor that he intends to remain out of Singapore for a period exceeding 14 days from the date of the declaration, or from a date therein mentioned. [emphasis added]

81 It appears that the amendments to the Trustees Act in 2004 had abolished the filing of trustee powers of attorney. The reasons for the abolition were not given in the Explanatory Statement to the amendment Bill or the Minister's Second Reading Speech on the amendment Bill.

82 The amendments to the Trustees Act in 2004 were a result of an extensive review by the Singapore Government to update and modernise the Trustees Act. The review was part of the broader objective to enhance Singapore's position as a leading financial and wealth management centre.<sup>51</sup> One of the amendments related to the repeal of s 27 and re-enactment thereof with substantial changes. The Committee notes that the re-enacted s 27 was modelled after s 25 of the UK Trustee Act 1925,<sup>52</sup> as amended by the UK 1971 Act.<sup>53</sup> As filing of powers of attorney was abolished in the UK *vide* the UK 1971 Act, it would appear that when the Singapore legislature adopted the UK provision in relation to s 27 in 2004, it also adopted the UK reform of not requiring trustee powers of attorney to be filed without making corresponding changes to the filing requirement for other types of powers of attorney.

(3) *No statutory provision for filing of deeds of revocation*

83 The CLPA does not provide for the filing of deeds of revocation of power of attorney. Section 48(8) of the CLPA merely provides that the Registrar of the Supreme Court, on being satisfied by affidavit or statutory declaration or otherwise that a deposited power of attorney has been revoked, shall endorse on the deposited power of attorney a certificate stating that it has been revoked and the date thereof. The power of attorney shall thereupon be deemed to have been duly revoked as from the date of that certificate.

---

51 See the Second Reading Speech on the Trustees (Amendment) Bill by the Deputy Prime Minister and Minister for Law, Professor S Jayakumar, *Singapore Parliament Reports* (Tenth Parliament, 19 October 2004) vol 78 at col 852.

52 1925 (c 19) (UK).

53 See the source note to s 27 in the Trustees Act (Cap 337, 2005 Rev Ed).

84 Notwithstanding that there is no statutory requirement for the deposit of deeds of revocation, the Committee noted that such deeds are in practice deposited in the Registry of the Supreme Court if they relate to a power of attorney already deposited.

85 In its study on the filing of powers of attorney, the Committee considered the position in the other jurisdictions.

### **B. UK**

86 Section 2 of the UK 1971 Act<sup>54</sup> abolished the filing of instruments creating powers of attorney at the Central Office of the Supreme Court or at the Land Registry.

87 Prior to the abolition, powers of attorney could in every case be filed at the Central Office in accordance with s 219 of the Supreme Court of Judicature (Consolidation) Act 1925 and such filing was mandatory in two cases, *viz*:

- (a) under s 25(4) of the Trustee Act 1925, in the case of a power of attorney granted by a trustee; and
- (b) under s 125(1) of the Law of Property Act 1925, when the power of attorney included power to dispose of any interest in land.

88 There were two exceptions to (b). The first exception was where the power of attorney related to one transaction only and was to be handed over on completion. The second exception was where the power related to registered land, in which case it must be filed in the Land Registry and need not be filed at the Central Office unless it also related to unregistered land.<sup>55</sup>

89 The abolition of filing in the UK arose from the English Law Commission's recommendation in 1970. The English Law Commission recommended abolition for the following reasons:<sup>56</sup>

- (a) The provisions requiring the filing of trustee powers and those relating to land were first introduced in the property legislation of 1925, but the

---

54 Section 2 has since been repealed by the UK Supreme Court Act 1981, s 152(4), Sched 7.

55 Law Commission for England and Wales, *Report on Powers of Attorney* (Law Com No 30, September 1970) at para 2.

56 Law Commission for England and Wales, *Report on Powers of Attorney* (Law Com No 30, September 1970) at paras 3–10.

Law Commission had been unable to ascertain why such provisions were considered desirable.<sup>57</sup>

- (b) Filing could add considerably to the expense of appointing an attorney. It required the preparation and execution of a statutory declaration, and personal attendance at the Central Office both to file the documents and to obtain office copies. If, by an oversight (and this, according to the Law Commission, occurred not infrequently), the power was not filed in cases where this was compulsory, considerable trouble and expense could be incurred in putting the matter right.
- (c) It would appear that the mere fact of filing did not afford any protection against, for example, a breach of trust or other abuse such as forgery, for the officials of the Central Office merely ensured that the power was properly executed on the face of it. That being so, there was no apparent reason for making filing compulsory in the case of powers of attorney granted by trustees.
- (d) The advantages of filing, *viz* filing ensured that the document would not be lost and that office copies of the power would always be available, which copies, by virtue of the Evidence and Powers of Attorney Act 1940, would be sufficient evidence of the contents of the power, flowed from the fact that an office copy, but no other copy, was of the same evidential value as the original document. However, if the provisions of the Evidence and Powers of Attorney Act 1940 were extended so that other types of copy were accepted as sufficient evidence, most of the advantages of the existing system would be retained without the need for a system which was expensive both to the State which maintained it and to those who used it.

90 With regard to the abolition of the mandatory filing requirements under s 125(1) of the Law of Property Act 1925 and s 25(4) of the Trustee Act 1925, the Law Commission had cited the following considerations in its Working Paper:<sup>58</sup>

- (a) As the advantages of filing would equally apply in the case of any other document of title, it was, on the face of it, somewhat strange that provisions requiring filing in the Central Office applied only to powers of attorney. If conveyancing could be transacted without provisions for the preservation and the obtaining of office copies of conveyances,

---

57 See also Law Commission for England and Wales, *Working Paper on Powers of Attorney* (Working Paper No 11, June 1967) at para 5, where the Law Commission explained that there appeared to have been no discussion of these provisions in either House.

58 Law Commission for England and Wales, *Working Paper on Powers of Attorney* (Working Paper No 11, June 1967) at paras 7–11.

mortgages and leases, it seemed difficult to argue that these provisions were essential in the case of powers of attorney, the importance of which was often far more ephemeral.

- (b) It was not apparent why, if filing was truly advantageous, it should be required only in the case of trustee powers or those relating to land. When a share transfer is executed by an attorney, the power becomes a document of title to the shares and has to be produced to the company concerned when the transfer is registered. Yet in this case, filing was not essential. This suggested that filing was not generally regarded as advantageous.
- (c) The exception in the case of powers relating to only one land transaction seldom operated. It was rare for a power to be expressed to relate to one transaction only. What was more common was for a power expressed quite generally to be used in fact in one transaction only, so that it would be perfectly possible to hand it over on the completion of that transaction. However, from the wording of s 125 of the Law of Property Act 1925, filing was compulsory in such a case notwithstanding that it served no very useful conveyancing purpose.
- (d) Even if there was a case for retaining filing of powers of attorney relating to land, there seemed to be no reason at all for retaining compulsory filing of trustee powers whether or not they related to land. It could not be said that filing afforded any protection against a breach of trust.
- (e) The advantage of being able to obtain office copies was greatly diminished now that nearly every solicitor had photocopying facilities in his office. From a practical viewpoint, it seemed doubtful whether the allegedly greater authenticity of office copies justified the considerable additional expense. It would, however, be necessary to direct or educate officials such as company registrars, who insisted on production of the original power or an office copy to accept instead a photocopy certified by a solicitor or some other responsible person.

91 With regard to the abolition of the voluntary filing provision under s 219 of the Supreme Court of Judicature (Consolidation) Act 1925, although theoretically there could be a case for retaining it so that there could be voluntary filing whenever it was thought advantageous to do so, the Law Commission doubted whether in practice there

was sufficient use of this facility to justify keeping the machinery for filing in operation.<sup>59</sup>

92 At the end of its review, the Law Commission concluded that the statutory provisions permitting or requiring filing of powers of attorney at the Central Office should be repealed and that it should be provided by statute that a duly certified photocopy, either of the original instrument or a duly certified photocopy, should be sufficient evidence of the contents of the original instrument.<sup>60</sup> The Law Commission's latter recommendation was implemented by way of s 3 of the UK 1971 Act.<sup>61</sup>

### **C. New South Wales**

93 In New South Wales, there is statutory provision for the registration of powers of attorney, but registration is voluntary, except in the case of dealings affecting land where registration is mandatory.

94 Section 51 of the New South Wales Powers of Attorney Act 2003 provides for a voluntary system for the registration of instruments creating powers of attorney and instruments revoking registered powers of attorney in the General Register of Deeds kept under the Conveyancing Act 1919. The mandatory registration system in relation to land transactions is provided in s 52 of the New South Wales Powers of Attorney Act which states that conveyances or other deeds affecting land which are executed under a power of attorney have no effect unless the instrument creating the power of attorney is registered.

95 Section 51 substantially re-enacts the provisions of the repealed ss 163(1)<sup>62</sup> and 163(3)<sup>63</sup> of the Conveyancing Act 1919. Section 52 substantially re-enacts the provisions of the repealed ss 163(2) and 163(4) of the Conveyancing Act 1919. However, s 52 makes it clear that this requirement to register powers of attorney is limited to deeds and memoranda affecting land. There had been some doubt in the case

---

59 Law Commission for England and Wales, *Working Paper on Powers of Attorney* (Working Paper No 11, June 1967) at para 12.

60 Law Commission for England and Wales, *Report on Powers of Attorney* (Law Com No 30, September 1970) at para 10.

61 In essence, s 3 allows for proof of the contents of an instrument creating a power of attorney by means of a certified photographic or other mechanical facsimile copy. The certification, which must appear at the end of each page and state that the copy is a true and complete copy of the original, may be made by the donor or by a solicitor or stockbroker.

62 The repealed s 163(1) of the Conveyancing Act 1919 had provided:

Any instrument (whether executed before or after the commencement of this Act) creating a power of attorney for any purpose whatever may be registered.

63 The repealed s 163(3) of the Conveyancing Act 1919 had provided:

Any instrument revoking any such power may also be registered.

law in New South Wales as to whether ss 163(2)<sup>64</sup> and 163(4)<sup>65</sup> of the Conveyancing Act 1919 had extended to other types of deed.<sup>66</sup>

96 The New South Wales Law Reform Commission in its review had considered the suitability of the practice under s 163 (since repealed) of the Conveyancing Act 1919. The Commission had found the mandatory registration of powers of attorney relating to dealings in land to be anomalous and that there did not seem to be a very great public advantage in having such a registration system in practice.<sup>67</sup>

97 However, the Commission recognised that matters pertaining to land under the provisions of the Real Property Act 1900 had to be considered in the context of the practice of the Registrar-General's Department and that if registration were discontinued, the Registrar-General might have to adopt a different practice which, conceivably, might be less economical and less expeditious.<sup>68</sup> One possible alternative was that the Registrar-General would require evidence of the contents of powers of attorney to be lodged to support the registration of dealings to protect him should disputes arise concerning the authority of an attorney under a power to have executed an instrument accepted for registration. On the other hand, if the Registrar-General were indemnified by statute against the consequences of registering a dealing which exceeded the scope of a covering power of attorney, his need to retain evidence of such powers would not arise.<sup>69</sup>

---

64 The repealed s 163(2) of the Conveyancing Act 1919 had provided:

Where such instrument is executed after the commencement of this Act no conveyance or other deed not being a lease or agreement for a lease for a term not exceeding three years, and no memorandum by this Act operating as a deed executed by the donee of the power in pursuance of the power shall be of any force or validity whatsoever unless the instrument creating the power has been registered:

Provided that on registration of the instrument creating the power every such conveyance deed or memorandum executed by the donee of the power shall take effect as if the instrument creating the power had been registered before the execution of the conveyance deed or memorandum.

At that time, in relation to land under the Real Property Act 1900, s 36(2) of that Act had provided:

A dealing executed under a power of attorney shall not be registered under this Act unless the power of attorney has been registered as provided for by the Conveyancing Act, 1919.

65 The repealed section 163(4) provided:

Every such conveyance and other deed and memorandum as is mentioned in subsection (2) executed by the attorney under a power of attorney before the commencement of the Conveyancing (Amendment) Act 1930, shall have the same effect as if that Act had been in operation at the time of the execution.

66 Explanatory Note to the Powers of Attorney Bill 2003, available from the Parliament of New South Wales website <<http://www.parliament.nsw.gov.sg>>.

67 New South Wales Law Reform Commission, *Working Paper on Powers of Attorney* (Working Paper 10, April 1973) at paras 95–96.

68 New South Wales Law Reform Commission, *Working Paper on Powers of Attorney* (Working Paper 10, April 1973) at para 98.

69 New South Wales Law Reform Commission, *Working Paper on Powers of Attorney* (Working Paper 10, April 1973) at para 99.

98 Whilst the Commission was of the view that registration of powers of attorney should not be mandatory, it did not suggest the abolition of optional registration. The Commission recognised that the provision of a State registry in New South Wales placed New South Wales in a different position from that which prevailed in England before the passing of the UK 1971 Act. The Commission opined that in New South Wales, “the registry is a public utility the benefits of which should not be denied to parties wishing to register any appropriate instruments”.<sup>70</sup>

99 At the completion of its review, the Commission, having considered all the representations made to it, decided not to recommend a reform of the registration system under s 163. The Commission stated:<sup>71</sup>

It has been strongly represented to us that the suggestion put forward for discussion in our Working Paper (paras 95 to 101), that registration of powers of attorney be made optional, would cause difficulty for conveyancers in some cases.

While we adhere to the view that the present law on the point is in some respects anomalous, we think that, as the current practice is now settled and understood, and may be an aid in proof of some titles, it should not be disturbed under the present terms of reference.

100 Notwithstanding that the Commission did not recommend the abolition of the registration of powers of attorney in New South Wales and thus, the same necessity for statutory provisions on the use of certified copies as evidence of original powers did not exist in New South Wales as in the UK, the Commission saw the advantage of having a statutory provision similar to s 3 of the UK 1971 Act. The Commission felt that many transactions could more conveniently be effected under powers of attorney by using a photographic copy of the relative power certified in the manner prescribed by ss 3(1) and 3(2) of the UK 1971 Act. The use of photographic copies should effect saving of time and expense in carrying out transactions under powers of attorney.<sup>72</sup>

101 In its consultation, the Commission received largely favourable feedback for having similar recognition of certified copies in New South Wales. Some commentators had, however, objected because of the risk of fraud and because any proliferation of copies might prejudice the prompt effectiveness of notice of termination.<sup>73</sup>

---

70 New South Wales Law Reform Commission, *Working Paper on Powers of Attorney* (Working Paper 10, April 1973) at para 101.

71 New South Wales Law Reform Commission, *Report on Powers of Attorney* (Report 18, June 1974) at paras 46 and 47.

72 New South Wales Law Reform Commission, *Working Paper on Powers of Attorney* (Working Paper 10, April 1973) at paras 104 and 106.

73 New South Wales Law Reform Commission, *Report on Powers of Attorney* (Report 18, June 1974) at para 50.



102 The Commission concluded that if the principal wishes, for convenience in managing his affairs and property, to approve the use of copies of his power of attorney, the law should facilitate his wish.<sup>74</sup> Accordingly, the Commission recommended that a document, of whatever nature, when certified as a true and complete copy of an instrument creating a power of attorney shall be, as against the principal, evidence of the execution and contents of the instrument and, as against other persons, evidence of the contents of the instrument. The certificate must be in writing and be given by the principal or by a person of a prescribed class. Such persons might include solicitors, accountants, stockbrokers and bankers.

103 The Commission's recommendation was implemented as s 163A (since repealed) of the Conveyancing Act 1919, which formed the basis of the current s 44 of the New South Wales Powers of Attorney Act 2003.

#### **D. Tasmania**

104 In Tasmania, there is statutory provision for the registration of powers of attorney. Section 15 of the Tasmania Powers of Attorney Act 2000 provides that a document creating a power of attorney for any purpose or varying, revoking or otherwise relating to a power of attorney may be registered. Section 17 provides that where a power of attorney has been registered under the Act, notice of the death, bankruptcy or insolvency of the donor or of revocation of the power of attorney by the donor is to be registered.<sup>75</sup>

105 Notwithstanding the wording of s 15, registration is, however, mandatory. Section 16 provides that an act, deed or instrument done, executed or signed under a power of attorney by the attorney has no legal effect unless the power of attorney has been registered. The register of powers of attorney is kept by the Recorder of Titles.<sup>76</sup>

106 At the second reading of the Powers of Attorney Bill 2000 in the Parliament of Tasmania, both in the Legislative Council<sup>77</sup> and the House of Assembly,<sup>78</sup> it was

---

74 New South Wales Law Reform Commission, *Report on Powers of Attorney* (Report 18, June 1974) at para 51. At the same time, the Commission was mindful of the importance of maintaining the stature of instruments appointing attorneys under power as instruments in aid of title.

75 Subsection (2) of s 17 sets out the types of documents that should be registered. They are (a) a declaration made by a person of the fact of the death, bankruptcy or insolvency of the donor made before a person having authority to administer an oath in the place, whether in Tasmania or elsewhere, where the declaration is made; (b) an instrument of revocation of a power of attorney; or (c) a notice of revocation under the hand of the donor of the power of attorney.

76 Tasmania Powers of Attorney Act 2000, s 4 read with the definition of "Recorder" in s 3.

77 See the Second Reading speech by Mr Parkinson (Wellington – Deputy Leader of the Government in the Council), 24 October 2000. The Legislative Council is the Upper House.

78 See the Second Reading speech by Mr Llewellyn (Lyons – Minister for Primary Industries, Water and Environment), 5 October 2000. The House of Assembly is the Lower House.

explained that all the states except Victoria had opted to retain legislation providing for the registration of powers of attorney and that there were six main advantages in providing for the registration of powers of attorney, as follows:

- (a) It is an aid in proving that the power of attorney was made. It provides a method by which a person dealing with the attorney appointed under the power of attorney can check to ensure that it is the original document.
- (b) It will greatly assist in cases where the original power has become lost or destroyed by accident, as it is now proposed to enable people to prove that a power of attorney exists by producing a copy from the interstate register.
- (c) It simplifies the problem facing people dealing with a person appointed as an attorney under a power of attorney, of being able to satisfy themselves that the power of attorney has, or has not, been revoked.
- (d) Without registration, if the donor of a power of attorney wants to revoke the power of attorney, the donor would have to seek out the attorney and serve the attorney with the revocation. This can only be done if the attorney can be located.
- (e) A very practical advantage of registration is that people who are dealing with an attorney will be able to make a search of the register to make sure that the power of attorney has not been revoked at the time when the attorney signs the document.
- (f) The introduction of the mutual recognition provisions will make it much easier for people involved in interstate transactions to register powers of attorney and obtain the advantages of registration, yet at the same time complete interstate transactions quickly.

107 It was further explained in Parliament that the abolition of the registration of powers of attorney could cause problems. The Ministers said:

Difficult practical problems are now arising in places where registration has been abolished. In those places where the donor of a power of attorney wishes to revoke that power of attorney, then the donor must serve notice of the revocation on the attorney. This assumes that the attorney can be located. If there is no provision for registration and if the attorney cannot be located or worse, and the attorney chooses to go on purporting to exercise powers under the revoked power of attorney, innocent people dealing bona fide with the attorney have no means of checking up to ensure that the power has not been

revoked.<sup>79</sup> Research has shown that it was this particular problem of potential dishonesty which led the parliaments in England and its colonies, to introduce legislation for the registration of powers of attorney last century.<sup>80</sup>

Therefore, by making provision for the registration of the revocation of the power of attorney or other notices showing the incapacity of the attorney, it provides an outside source of information whereby the person dealing with the attorney can check up and determine whether or not the power has been revoked. In Tasmania, members of the legal profession, when canvassed, were emphatic in their support of the retention of the registration of powers of attorney. The government accepts the soundness of this view and for this reason has continued with the statutory provision for the registration of powers of attorney.<sup>81</sup>

[footnotes added]

### ***E. British Columbia***

108 In British Columbia, there is no provision for the filing of powers of attorney in the Power of Attorney Act.

### ***F. Hong Kong***

109 In Hong Kong, there is no provision for the filing of powers of attorney in the Powers of Attorney Ordinance. This is probably because the Hong Kong Powers of Attorney Ordinance is modelled after the UK 1971 Act.

### ***G. Malaysia***

110 In Malaysia, it is mandatory for instruments creating powers of attorney to be deposited in the office of a Senior Assistant Registrar of the High Court. Section 4(1) of the Malaysia Powers of Attorney Act 1949 provides that no instrument purporting to create a power of attorney shall have any validity to create such power within Peninsular Malaysia until a true copy or an office copy (as the case may be) of the instrument has been deposited. Where the original instrument has been deposited in the Registry of the Supreme Court of Singapore, an office copy of the instrument would

---

79 See Second Reading speech by Mr Parkinson (Wellington – Deputy Leader of the Government in the Council), Legislative Council (Upper House), Parliament of Tasmania, 24 October 2000, and Second Reading speech by Mr Llewellyn (Lyons – Minister for Primary Industries, Water and Environment), House of Assembly (Lower House), Parliament of Tasmania, 5 October 2000.

80 See Second Reading speech by Mr Llewellyn (Lyons – Minister for Primary Industries, Water and Environment), House of Assembly (Lower House), Parliament of Tasmania, 5 October 2000.

81 See Second Reading speech by Mr Parkinson (Wellington – Deputy Leader of the Government in the Council), Legislative Council (Upper House), Parliament of Tasmania, 24 October 2000, and Second Reading speech by Mr Llewellyn (Lyons – Minister for Primary Industries, Water and Environment), House of Assembly (Lower House), Parliament of Tasmania, 5 October 2000.

suffice. In all other cases, a true copy of the instrument, duly compared therewith and marked by the Senior Assistant Registrar with the words “true copy” must be deposited.

111 An exception to the deposit requirement in s 4(1) is where the instrument is executed and used for the sole purpose of carrying out transactions in the office of a Registrar of Titles or a Land Administrator or a Chief Inspector or Senior Inspector of Mines, provided that the instrument is attested in accordance with any law on the attestation of such an instrument.<sup>82</sup>

## ***H. Singapore***

112 In the case of Singapore, the Committee considered four options:

- (a) maintain *status quo*;
- (b) abolish filing of powers of attorney;
- (c) extend the filing system to powers of attorney not relating to land and to trustee powers of attorney (that is, all types of powers of attorney); and
- (d) extend the filing system to powers of attorney not relating to land only (that is, exclude trustee powers of attorney).

113 The legal practitioners on the Committee expressed the view that the proposed Powers of Attorney Act should provide for the filing of all types of powers of attorney and deeds of revocation. Filing serves a useful purpose as persons dealing with donees will be able to ascertain the validity and scope of their power easily and conveniently by conducting a search of the register maintained by the Registry of the Supreme Court. It also facilitates proof of the power of attorney as a certified copy of the instrument filed can be adduced as evidence.

114 The Committee was informed that the Registrar of Titles has no objections if the filing of powers of attorney at the Registry of the Supreme Court is abolished as there will be minimal impact on the operations of the Land Titles Registry. The Land Titles Registry’s current practice is not to require the power of attorney to be forwarded for inspection if the donor in the transaction is represented by a solicitor. The Registrar of Titles will rely on the certificate of correctness signed by the solicitor as it is implied in the said certificate that the donee has the proper authority to act as the attorney of the donor. If filing is abolished, the Registrar of Titles will dispense with the current

---

82 Powers of Attorney Act 1949 (M’sia) s 4(4).

practice of quoting the filing/registration number of the power of attorney in the documents to be lodged at the Land Titles Registry.

115 To assist the Committee in studying the impact of the abolition of filing of powers of attorney in Singapore, the Supreme Court provided statistics of powers of attorney deposited in its Registry from 2002 to June 2007. A total of 42,166 powers of attorney were deposited under s 48 of the CLPA during this period. The yearly average is about 7,667. The number of requests for file inspection and for certified true copies during the same period is 33 and 1,544, respectively.

116 The Committee noted that the High Court of Malaysia in accepting the deposit of powers of attorney currently has an arrangement where it recognises a power of attorney that has been deposited in the Registry of the Supreme Court in Singapore. Pursuant to s 4 of the Malaysia Powers of Attorney Act 1949, where the original power of attorney is deposited in the Registry of the Supreme Court in Singapore, the Senior Assistant Registrar does not require the deposit of a true copy of the instrument; an office copy of the instrument deposited in Singapore would suffice.

117 This appears to be a reciprocal arrangement between Singapore and Malaysia as s 48(1)(a) of the CLPA allows an office copy of an instrument creating a power of attorney to be deposited in the Registry of the Supreme Court if the instrument has been registered in Malaysia. In such a case, it would not be necessary to deposit the instrument itself or a true copy of the instrument.

### *I. Recommendation for Singapore*

118 The Committee recommends that filing of powers of attorney be retained as it serves a useful practical purpose. For completeness, the Committee also recommends that the filing system extends to instruments of revocation as well.

119 The Committee opined that it would be useful to have a filing system so as to enable persons dealing with donees to verify the validity and scope of their power before entering into any transaction with them. It would also facilitate proof of powers of attorney through the production of a certified true copy of the instrument filed, or an office copy of the instrument filed as in the case of Malaysia. It should be noted that the filing system recommended is a voluntary system. In the absence of strong views that filing should be mandatory,<sup>83</sup> the Committee was of the view that a filing system similar to the current system of voluntary deposit of powers of attorney under the CLPA would be suitable for Singapore.

---

83 For example, to prevent forgery in which case, the Registrar of the Supreme Court may be required to verify the authenticity of the instrument sought to be filed.

120 The Committee further recommends that filing be extended to all types of powers of attorney including trustee powers of attorney and powers of attorney not relating to land transactions. There is no reason why such powers of attorney should be excluded from a voluntary filing system. In the case of trustee powers of attorney, mandatory filing was abolished in 2004 when the Trustees Act was amended. Parliament removed the requirement for mandatory filing, but it did not preclude the voluntary filing of trustee powers of attorney under the CLPA. In the case of powers of attorney not relating to land transactions, they should not be excluded from the filing system if they deal with matters of similar importance such as the operation of bank accounts or moveable property of significant value. It is noted that the Registry of the Supreme Court already accepts for deposit powers of attorney not relating to land transactions but relating to “property” as defined in s 2 of the CLPA.

121 With respect to the filing of instruments revoking powers of attorney, the Committee considered whether such filing should constitute constructive notice of the revocation. In the Committee’s opinion, it would not be desirable to treat a filing of revocation instrument as constituting constructive notice of the revocation. This will change the role of the Registry of the Supreme Court as it entails a change of the scheme of filing and the responsibility of the Registry of the Supreme Court. It will also affect the common law rules. Currently, the Registry of the Supreme Court acts as a depository. It verifies the execution and contents of the powers of attorney only (although the legal effect of the verification of execution is not certain). If filing of revocation instruments is to be regarded as constructive notice of the revocation, it will change the role of the Registry of the Supreme Court to one which verifies the validity of the revocation.

122 Accordingly, cl 4 of the proposed Powers of Attorney Bill at Annex A provides for the voluntary filing in the Registry of the Supreme Court of instruments creating powers of attorney and instruments revoking powers of attorney already filed. Clause 4 does not distinguish between different types of powers of attorney, and is intended to apply to all types of powers of attorney including trustee powers of attorney and powers of attorney not relating to land transactions. It should be noted that cl 4(7) re-enacts s 48(5) of the CLPA by providing that an office copy of the instrument filed shall without further proof constitute sufficient evidence of the contents of the instrument and of the filing thereof in the Registry.

123 Notwithstanding that there is no recommendation to abolish filing of powers of attorney, the Committee was of the view that it would be useful to have a statutory provision to facilitate proof of the contents of powers of attorney in the manner prescribed by s 3 of the UK 1971 Act. The Committee agreed with the New South Wales Commission that the use of photographic copies of powers of attorney would save time and expense in carrying out transactions under powers of attorney. Accordingly, cl 5 of the proposed Powers of Attorney Bill at Annex A provides that a photocopy of a power of attorney which is certified as such by a solicitor, commissioner for oaths or notary public shall be sufficient proof of the existence and contents of the power.

124 In view of the proposed cll 4 and 5, the Committee recommends that s 48 of the CLPA be repealed. Consequential amendments may also have to be made to the CLPA, Land Titles Act, Registration of Deeds Act, Trustees Act and Rules of Court.

## VI. Revocation and Protection of Donee and Third Persons

125 A power of attorney may come to an end by effluxion of time, by operation of law,<sup>84</sup> by the donor revoking it or by the donee releasing or disclaiming it. Some powers are irrevocable, or may only be revoked by the donor with the donee's consent. These could theoretically be permanent although they may in fact come to an end.<sup>85</sup>

126 A donee who purports to act under a power of attorney which is invalid – either because it was not validly granted, so that it never conferred any authority, or because it has ceased to be valid, either through expiry or revocation – can be liable for any loss which his act causes to others. In the absence of statutory intervention, there are three possible types of claim he may face. Firstly, the donor may claim for the wrongful disposal of his property, or other loss caused by unauthorised interference in his affairs. Secondly, a person with whom the donee contracts, purportedly on behalf of the donor, will have a claim for breach of warranty of authority. Thirdly, there could also be a claim from a third party more remotely affected, for instance, taking property from the person who bought from the donee, and finding himself without proper title.<sup>86</sup>

127 If the donee is aware that his authority under the power of attorney is at an end, but nevertheless continues to act under the power, he is justifiably liable. However, if the power is revoked without his knowledge, he can find himself unwittingly liable. It is possible for the donor to revoke a power of attorney without notifying the donee. Further, there are cases where the law impliedly revokes a power. For instance, when the donor dies, any power he granted ceases to have effect. An ordinary power of attorney is also revoked when the donor ceases to have mental capacity. In such a case, revocation is automatic, and it is frequently impossible to say precisely when the revocation takes effect.<sup>87</sup>

128 Statute has recognised the difficulty in which these rules may place an honest donee, and has provided protection. The powers of attorney legislation in the UK, New South Wales, Tasmania, British Columbia, Hong Kong and Malaysia contains

---

84 Under the common law of agency, the actual authority of an agent, whether conferred by deed or not and whether expressed to be irrevocable or not, is determined by the death or supervening mental incapacity of either the principal or the agent, or where the principal or agent is a body corporate, by its winding up or dissolution. See *Bowstead & Reynolds on Agency* (18th Ed, 2006) at para 10-015.

85 T M Aldridge, *Powers of Attorney* (9th Ed, 2000) at para 7-01.

86 *Bowstead & Reynolds on Agency* (18th Ed, 2006) at para 11-01.

87 *Bowstead & Reynolds on Agency* (18th Ed, 2006) at para 11-01.

provisions to the effect that a donee who acts in pursuance of a power when it has been revoked incurs no liability provided that he did not at the time know that it had been revoked.

129 In Singapore, s 46 of the CLPA protects an attorney who made payment or did any act in good faith if at the time of the payment or act he did not know that the donor had died, become of unsound mind or bankrupt, or had revoked the power. Section 47 of the CLPA provides that a statutory declaration by an attorney to the effect that he has not received any notice or information of the revocation of the power shall be conclusive proof of non-revocation if the statutory declaration is made immediately before or within three months after the payment or act by the attorney.

130 Sections 46(1) and 46(2) of the CLPA is *in pari materia* with the repealed ss 124(1) and 124(3) of the UK Law of Property Act 1925. Section 47 is *in pari materia* with the repealed s 124(2) of the UK Law of Property Act 1925.

#### **A. United Kingdom**

131 The English Law Commission in its review recommended the repeal of s 124 of the UK Law of Property Act 1925. The Law Commission found that s 124 was difficult to construe and unsatisfactory in result and that the protection apparently intended to be conferred was often illusory. The Law Commission's opinion was confirmed by the comments received during the public consultation exercise.<sup>88</sup> The Law Commission further recommended a simpler provision in the form of s 5 of the UK 1971 Act to replace s 124.

132 The Law Commission identified a number of difficulties with s 124.

##### *(1) Protection of donee and third parties*

133 One difficulty concerned whom the provision was intended to protect. The Law Commission was of the view that s 124(1) was clearly intended to protect the donee from suits by the donor or by the third party with whom he had dealt, but it gave no protection to that third party. In relation to the third party, the Law Commission commented:<sup>89</sup>

Such a person can hardly be said to have made the payment or done the act 'in pursuance of a power of attorney' or 'under or in pursuance of any power of attorney'. He had acted in reliance on the power, but not in pursuance of it.

---

88 Law Commission for England and Wales, *Report on Powers of Attorney* (Law Com No 30, September 1970) at para 29.

89 Law Commission for England and Wales, *Working Paper on Powers of Attorney* (Working Paper No 11, June 1967) at para 44.



134 In relation to s 124(2), the Law Commission remarked:<sup>90</sup>

This subsection, introduced for the first time in 1925, obviously envisages protection of the person dealing with the donee – and no one else. It would be absurd to suggest that the donee can provide conclusive evidence in his own favour by himself making a statutory declaration – though that, on the face of it, is what the subsection says. Presumably, therefore, whereas subsection (1) relates to protection of the donee, subsection (2) relates to protection of those having dealings with him.

135 However, by reading the subsections together, the Law Commission found that it was possible “to produce the absurd result that obtaining a statutory declaration of non-revocation affords the third party no protection when it is he [who] has done the act or made the payment to the donee, but does protect him when it is the donee who has done the act or made the payment to him”.<sup>91</sup>

136 The Law Commission further commented that the section seemed to be designed to afford protection to the attorney himself (this interpretation was supported by the terms of s 124(3)) rather than to third parties dealing with him. However, such an interpretation was impossible in the light of s 124(2) which provided that a statutory declaration by the attorney that he had not received notice of revocation shall be conclusive. The Law Commission felt that clearly it could be conclusive only in favour of a third party.<sup>92</sup>

137 Another difficulty concerned the requirement in s 124(1) that the act or payment must be “in good faith”. As s 124(1) applied only to acts and payments by the donee, it would be the donee’s good faith that must be meant. However, as pointed out by the Law Commission:<sup>93</sup>

... clearly what should be relevant as regards the protection of the third party is whether he, the third party, has acted in good faith. That, however, appears from the wording of subsection (2) to be totally irrelevant. It would seem that he obtains the protection of subsection (2) even though he has not acted in good faith because, for example, he knows perfectly well that the donor has died.

---

90 Law Commission for England and Wales, *Working Paper on Powers of Attorney* (Working Paper No 11, June 1967) at para 45.

91 Law Commission for England and Wales, *Working Paper on Powers of Attorney* (Working Paper No 11, June 1967) at para 46.

92 Law Commission for England and Wales, *Report on Powers of Attorney* (Law Com No 30, September 1970) at para 30.

93 Law Commission for England and Wales, *Working Paper on Powers of Attorney* (Working Paper No 11, June 1967) at para 47.

138 The Law Commission went on to say:<sup>94</sup>

What is even more absurd is that it is arguable that he [the third party] is not protected if the donee has not acted in good faith although he, the third party, has acted in good faith. If ‘such act or payment’ in subsection (2) means a payment or act in good faith, such as is referred to in subsection (1), then the unfortunate third party may be deprived of his protection because of the bad faith of the donee.

139 The Law Commission concluded that ss 124(1) and 124(2) was obscure and inadequate, and could “only be made sensible if re-drafted so as to make it clear that the acts and payments covered ... refer to those by the third party as well as those by the donee and that the [section] protect the donee if he has acted in good faith and the third party if he has acted in good faith”<sup>95</sup>.

140 The Committee is of the view that similar criticisms may be made of s 46(1) of the CLPA, and agrees with the conclusion of the Law Commission. It is noted that the New South Wales Law Reform Commission had also agreed with the English Law Commission’s criticisms and conclusions with regard to ss 160(1) and 160(2) of the New South Wales Conveyancing Act 1919.<sup>96</sup>

141 Accordingly, the Committee recommends the adoption of ss 5(1) and 5(2) of the UK 1971 Act to provide for the protection of the donee and third parties.

142 Section 5(1) of the UK 1971 Act provides that a donee who acts in pursuance of any power of attorney at a time when it has been revoked shall not by reason of the revocation incur any liability to the donor or to any other person if at that time he did not know that the power had been revoked.

(2) *Statutory declaration of lack of knowledge of revocation*

143 Before the enactment of the UK 1971 Act, a statutory declaration by a donee to the effect that he had no notice of the revocation of the power of attorney at the time of making payment or doing any act in pursuance of the power would constitute conclusive proof of such non-revocation. This was provided in s 124(2) of the UK Law of Property Act 1925.

---

94 Law Commission for England and Wales, *Working Paper on Powers of Attorney* (Working Paper No 11, June 1967) at para 47.

95 Law Commission for England and Wales, *Working Paper on Powers of Attorney* (Working Paper No 11, June 1967) at para 50.

96 New South Wales Law Reform Commission, *Working Paper on Powers of Attorney* (Working Paper 10, April 1973) at paras 52 and 53.

144 Section 5 of the UK 1971 Act has changed the English position. Section 5(1) dispenses with the requirement for a statutory declaration by the donee. By s 5(4), a conclusive presumption may arise, in favour of a purchaser from a party who dealt with the donee, that such party had no notice of the revocation. The presumption can arise either by the making by the party of a statutory declaration of lack of knowledge of revocation, or by the fact that the party dealing with the donee completed his transaction within 12 months of the operative date of the power of attorney.

145 The change was recommended by the English Law Commission because it found the practice under the UK Law of Property Act 1925 to be obscure and of doubtful value. In relation to its recommendation to repeal s 127 of the UK Law of Property Act 1925 dealing with the protection of third parties, the Law Commission opined that a statutory declaration by the attorney appeared to be a waste of money. The Law Commission commented:<sup>97</sup>

A statutory declaration by the attorney appears, as some of our consultants have pointed out, to be a waste of money in any case. Unless the attorney is fraudulent he will not exercise the power once he knows that it has ended. If he is fraudulent he will not boggle at making a false statutory declaration.

146 The Law Commission recommended the new practice embodied in s 5(4) of the UK 1971 Act. The Law Commission explained:<sup>98</sup>

... a third party dealing with the attorney shall be protected unless he knew at the time of events bringing the power to an end. There is no need to obtain a statutory declaration from the attorney. On the other hand, the transactions may form a link in the chain of title of the third party. The validity of his title will depend on his absence of knowledge. How is the purchaser from him to be sure of that? The answer ... is that a purchaser from the third party is protected if that transaction between the attorney and the third party was completed within 12 months of the date of the power of attorney ... If the transaction was after 12 months, then, as at present, the purchaser will not be fully protected unless he obtains a statutory declaration. But, in place of the somewhat pointless statutory declaration by the attorney, the declaration required is one by the third party confirming that he had no knowledge of the facts which caused the power to end.

147 The Committee agrees with the English approach and recommends that s 5(4) of the UK 1971 Act be adopted.

148 It is noted that the New South Wales Law Reform Commission had considered the UK approach but decided against adopting it. The New South Wales Commission

---

97 Law Commission for England and Wales, *Report on Powers of Attorney* (Law Com No 30, September 1970) at para 34(f).

98 Law Commission for England and Wales, *Report on Powers of Attorney* (Law Com No 30, September 1970) at para 35.

was of the view that there was no need to create conclusive presumptions nor employ declarations or statements of non-revocation.<sup>99</sup> In its Working Paper, the New South Wales Commission had commented that a general presumption of non-revocation in favour of dealings made within 12 months of the coming into operation of a power was arbitrary. The Commission also doubted that a declaration by the party dealing with the donee really had better probative value than a declaration or statement by the donee himself.<sup>100</sup>

149 Accordingly, cll 8(1), 8(2) and 8(3) of the proposed Powers of Attorney Bill at Annex A provides for the protection of the donee and any third party dealing with the donee where the donee and the third party do not have knowledge of the revocation. Clause 8(4) creates in certain circumstances a conclusive presumption in favour of a purchaser that the third party did not know of the revocation.

## **B. New South Wales**

150 In New South Wales, the relevant provisions are ss 47 and 48 of the Powers of Attorney Act 2003. Section 47 accords protection to an attorney if he is unaware of the termination or suspension of the power. In such a case, the attorney is entitled to rely on the power of attorney that has been terminated or suspended. Section 48 accords protection to third parties. Third parties to a power of attorney are entitled in certain circumstances to rely on acts done under terminated or suspended powers of attorney. Sections 47 and 48 substantially re-enact the provisions of ss 161 and 162 of the New South Wales Conveyancing Act 1919, which have been repealed.

151 The repealed ss 161 and 162 of the Conveyancing Act 1919 arose from the review of the law on powers of attorney by the New South Wales Law Reform Commission. The New South Wales Commission recommended the repeal of the former s 160<sup>101</sup> and enactment of new provisions in the form of ss 161 and 162.

152 The New South Wales Commission found the system under the former s 160 to be defective in a material respect.<sup>102</sup>

---

99 New South Wales Law Reform Commission, *Report on Powers of Attorney* (Report 18, June 1974) at para 37.

100 New South Wales Law Reform Commission, *Working Paper on Powers of Attorney* (Working Paper 10, April 1973) at para 59.

101 The former s 160 of the Conveyancing Act 1919 was concerned with notice of revocation of powers of attorney and, particularly, with the consequences of an attorney having acted under a revoked power without notice of the revocation. See New South Wales Law Reform Commission, *Working Paper on Powers of Attorney* (Working Paper 10, April 1973) at para 35.

102 New South Wales Law Reform Commission, *Report on Powers of Attorney* (Report 18, June 1974) at para 29.

It protects only those dealing for value with the ‘donee’. It gives no protection to persons, such as registrars or bankers, who may be dealing with the ‘donee’ *bona fide* and without notice, but not for valuable consideration, nor (expressly at least) to persons, such as a subsequent purchaser, who may deal *bona fide*, without notice, and for valuable consideration, but not with the attorney.

153 The New South Wales Commission recommended as follows:

There are two consequences of revocation to be provided for in the statute. First is the need to protect the attorney who acts within the scope of the power and without notice of its termination. That protection will be given by our proposed section 161. Second is the need to protect third parties. ...

Section 161 in our draft bill is intended to protect the attorney himself where he has acted within the scope of the power and without notice of its termination. As we stated in our Working Paper (paras 44 and 45), we think the concept of ‘notice’ of termination preferable to the concept of ‘knowledge’ of termination as used in the English enactment.

Section 162 in our draft bill is novel and calls for explanation. Its intention is to protect third parties, and claimants under third parties,<sup>103</sup> who have acted without notice of the termination of a power of attorney and in reliance upon it. The section is likely to involve a substantial change to, and facilitation of, current conveyancing practice.<sup>104</sup>

[footnotes added]

154 In the light of comments made in response to its *Working Paper on Powers of Attorney*, the New South Wales Commission also found the need to secure a declaration

---

103 The New South Wales Law Reform Commission explained that “[e]ven if it has become notorious that a power of attorney was terminated when the attorney acted under it, a purchaser who takes with notice from a vendor who had no notice will receive a good title because he is ‘any person claiming under’ a third person without notice.” See New South Wales Law Reform Commission, *Report on Powers of Attorney* (Report 18, June 1974) at para 43.

104 New South Wales Law Reform Commission, *Report on Powers of Attorney* (Report 18, June 1974) at paras 30–32. Further, at paras 38–41, the New South Wales Commission explained that the proposed s 162 of the Conveyancing Act 1919 stipulated three ingredients necessary to secure protection to third parties who had relied on a power of attorney without notice of its revocation:

- (a) there must be an act under a power of attorney done by the attorney within the scope of the power and professing to act on behalf of another;
- (b) at or after the time of the attorney’s act, a third person (for instance, a purchaser from the attorney or any purchaser thereafter) must act to his detriment in a transaction, or act in reliance on a right title or interest, the validity of which depends on the power not having terminated; and
- (c) the third person at the time of acting must have had no notice of the termination of the power before the act done by the attorney.

Once these three ingredients were satisfied, protection was extended to that third person and to any person claiming under him, notwithstanding the termination of the power before the material time of acting upon it.

or memorandum of non-revocation from the attorney under the former s 160<sup>105</sup> to be inconvenient in practice. The New South Wales Commission recommended that it be “abandoned without in any way adding to a conveyancer’s responsibilities”.<sup>106</sup> The New South Wales Commission also felt that there would not be any need to create conclusive presumptions (as in s 5(4) of the UK 1971 Act), nor employ declarations or statements of non-revocation.<sup>107</sup>

### **C. Tasmania**

155 In Tasmania, the relevant provisions are ss 27, 28, 29, 51 and 52 of the Powers of Attorney Act 2000.

156 Sections 27, 28 and 29 provide how a power of attorney may be revoked. Section 27 provides for the revocation of a power of attorney, whether registered or not, if the attorney is notified of its revocation by the donor or of the death, bankruptcy or insolvency of the donor. It further provides that a power of attorney that is registered is revoked if notification of its revocation or of the death, bankruptcy or insolvency of the donor is lodged with the Recorder.<sup>108</sup>

157 Under s 28, where a power of attorney has been revoked or the donor has died or has become subject to a mental incapacity, bankrupt or insolvent, a person dealing in good faith with the attorney without notice of the revocation, death, mental incapacity, bankruptcy or insolvency is not affected. However, in the case of a power of attorney that is registered, the rights of a person dealing in good faith with the attorney are not preserved if notice of the revocation, death, mental incapacity, bankruptcy or insolvency has been given to the Recorder.

158 Section 29 provides for the revocation of an unregistered power of attorney. If the attorney cannot be found or it is impracticable to give notice of the revocation or of the death, mental incapacity, bankruptcy or insolvency of the donor to the attorney, s 29 provides that the unregistered power of attorney may be revoked by lodging notice of the revocation together with a copy of the power of attorney with the Recorder.

---

105 In its *Working Paper on Powers of Attorney* (Working Paper 10, April 1973) at para 58, the New South Wales Law Reform Commission explained that in New South Wales, the requirement had always been for positive evidence from the donee of the power. The provisions of s 160(4) (not found in any comparable English legislation) permitted a statement within, or memorandum endorsed on, the relative instrument. The same subsection rendered the making of a false statement a misdemeanour. A party dealing with the donee was just as liable, if fraudulent, to make a false declaration or statement, as the donee would be if fraudulent.

106 New South Wales Law Reform Commission, *Report on Powers of Attorney* (Report 18, June 1974) at para 35.

107 New South Wales Law Reform Commission, *Report on Powers of Attorney* (Report 18, June 1974) at para 37.

108 Powers of Attorney Act 2000 (Tasmania) s 27(2).

159 Section 51 accords protection to persons making a payment or doing any act in good faith under a power of attorney without notice of the revocation of the power of attorney or of the death, mental incapacity, bankruptcy or insolvency of the donor. Such a person is not liable in respect of the payment or the act by reason that before the payment or act the donor had died, or had become subject to a mental incapacity, bankrupt or insolvent, or had revoked the power.

160 Section 52 provides for the validity of acts done by the attorney under a power of attorney that is registered after revocation of the power and before registration of the revocation. Such an act, deed or instrument done, executed or signed by the attorney is, in favour of a person who in good faith and without notice of the death, bankruptcy, insolvency or revocation has dealt with the attorney in the name of the donor, as valid and effectual as if the death, bankruptcy, insolvency or revocation had not taken place.

#### **D. British Columbia**

161 In British Columbia, s 4 of the Power of Attorney Act provides for the effect of termination of a power of attorney. Section 4(1) provides that where a person who has no knowledge of the termination purports to deal with the principal through the agent, then for the purpose of determining the legal rights and obligations of the principal in relation to that person, the transaction is, in favour of that person, deemed to be valid as if the authority had existed.

162 However, if the principal has by express revocation terminated the authority of an agent and given notice of the termination to the agent, s 4(2) provides that the liability of the principal to any person for the subsequent acts of the agent must be determined without regard to the Act.

163 Section 4(3) accords protection to third party strangers who have no knowledge of the termination of the authority of the agent. The subsection provides for the situation where the authority of an agent to act on behalf of the principal has been terminated but the agent purporting to act for the principal enters into a transaction with a person (“the intermediate party”) and the rights of another person (“the stranger”) are dependent on the validity of the transaction entered into by the agent with the intermediate party, and the stranger had at the material time no knowledge of the termination of the authority of the agent. In such a situation, for the purpose of determining the legal rights and obligations of the principal in relation to the stranger, the intermediate party is conclusively deemed to have had no knowledge of the termination.

#### **E. Hong Kong**

164 In Hong Kong, s 5 of the Powers of Attorney Ordinance accords protection to the donee and third persons where a power of attorney is revoked. Section 5 is largely *in pari materia* with s 5 of the UK 1971 Act.

## ***F. Malaysia***

165 In the Malaysia Powers of Attorney Act 1949, s 5 provides that every instrument purporting to create a power of attorney of which a true copy or an office copy has been deposited in the office of the Registrar or a Senior Assistant Registrar shall, so far as the instrument is valid and so far as may be compatible with the terms of the instrument, continue in force until:

- (a) notice in writing of the revocation thereof by the donor or of the renunciation thereof by the donee has been deposited;
- (b) the donor or donee has died;
- (c) the donee has become of unsound mind;
- (d) the donor has been adjudged to be of unsound mind; or
- (e) a receiving order has been made against the donor in bankruptcy.

166 Section 8 accords protection to any person making or doing any payment or act in good faith in pursuance of a power of attorney. Such a person is not liable in respect of the payment or act if at the time of the payment or act he did not know of the death, mental disorder, unsoundness of mind, bankruptcy or revocation.

## ***G. Recommendation for Singapore***

167 The Committee recommends the repeal of ss 46 and 47 of the CLPA, and the adoption of s 5 of the UK 1971 Act. This is provided in cl 8 of the proposed Powers of Attorney Bill at Annex A.

168 Further, as recommended by the Committee at Pt V of this report, cl 4(11) of the proposed Powers of Attorney Bill at Annex A provides for the filing in the Registry of the Supreme Court of instruments revoking powers of attorney already filed. The power shall be deemed to have been duly revoked as from the date of filing of the instrument revoking the power.

## **VII. Irrevocable Powers of Attorney**

169 The powers of attorney legislation of most of the jurisdictions surveyed, namely England, New South Wales, Tasmania, Hong Kong and Malaysia, provides specifically for the irrevocability of particular types of power of attorney. Singapore seems to be no exception. Section 44 of the CLPA appears to give recognition to the irrevocable nature



of powers of attorney for a fixed time where the instrument creating the power expresses the power to be irrevocable for that fixed time.

170 Section 44 of the CLPA is derived from the repealed s 127 of the UK Law of Property Act 1925. Section 127 was repealed by the UK 1971 Act. The provision on irrevocable powers of attorney was re-enacted as s 4 of the UK 1971 Act with a number of modifications. Section 4 of the UK 1971 Act represents a change of the statutory law in England in so far as irrevocable powers of attorney are concerned.

171 Sections 126 and 127 of the UK Law of Property Act 1925 were the predecessor of the relevant provisions in the New South Wales Powers of Attorney Act 2003. However, the New South Wales legislature in re-enacting the provisions on irrevocable powers of attorney departed from the English position in s 4 of the UK 1971 Act.

172 The Committee considered whether to provide for irrevocable powers of attorney in the proposed Powers of Attorney Act. The starting point for the Committee is the position at common law. As s 44 of the CLPA is derived from the English law, the Committee traced the legislative developments in England. The Committee also looked at the legislative developments in New South Wales where the origin of the earlier provisions on irrevocable powers is the English law. In view of the deviation in New South Wales from the English law, the Committee found it pertinent to explore the reasons for the deviation.

#### *A. At common law*

173 At common law, where the authority of an agent is given by deed, or for valuable consideration, for the purpose of supporting or effectuating any security, or (perhaps) of protecting or securing an interest of the agent, it is irrevocable during the subsistence of such security or interest.<sup>109</sup>

174 The rule at common law is explained in *Bowstead & Reynolds on Agency* as follows:

... a grant of authority is of its nature revocable. The mere fact that a power is declared in the instrument granting it to be irrevocable does not make it so, even if that instrument is a deed. Authority *can* be irrevocable; but this is only where the notion of agency is employed as a legal device for a different purpose from that of normal agency, to confer a security or other interest on the 'agent'. In such a case it is intended that the agent use the authority not for the

---

109 *Bowstead & Reynolds on Agency* (18th Ed, 2006) Art 118(1) at p 604, para 10-006.

benefit of his principal but for his own benefit, to achieve the objects of the arrangement.<sup>110</sup>

The cases from which this rule is derived, in particular dicta of Lord Kenyon in *Walsh v Whitcomb*<sup>111</sup> in 1797 and the decision in *Smart v Sandars*,<sup>112</sup> in the context of factors, in 1848, go back to a time of what one might call experimentation between legal doctrines (not all of which survive)<sup>113</sup> ...

The orthodox contemporary position is that authority is irrevocable where it accompanies a security or proprietary interest and is part of it or a means of achieving it. The fact that the agent subsequently acquires an interest in the property is irrelevant: the authority must be conferred as part of, or as protection of the agent's interest. The authority is referred to as 'authority' or 'power' 'coupled with an interest', a phrase not unconnected with the 19th century notion in a different context of a licence coupled with an interest. The mere right to earn a commission is not such an interest; nor is an agent's lien, unless the power was conferred specifically to protect it or sums due under it. As already stated, this is different from normal agency, in which the agent must act in the interests of the principal: here the agent acts in his own interests. Agency is here a device for supporting or conferring a proprietary interest (a power of attorney to sue on another's behalf and a power of sale are ways of enforcing a security).<sup>114</sup>

175 In short, a power of attorney coupled with an interest is irrevocable at common law while that interest subsists.<sup>115</sup> In *Oldham v Oldham*,<sup>116</sup> Lord Romilly MR referred to "the ordinary case of a power of attorney given for value, which, as everybody is

---

110 See *Bowstead & Reynolds on Agency* (18th Ed, 2006) at p 605, para 10-007, which comments on Art 118 R (1).

111 (1797) 2 Esp 565. In that case, Lord Kenyan said:

There is a difference in cases of powers of attorney: in general they are revocable from their nature; but there are these exceptions. Where a power of attorney is part of a security for money, there it is not revocable; where a power of attorney was made to levy fine, as part of a security, it was held not to be revocable; the principle is applicable to every case where a power of attorney is necessary to effectuate any security; such is not revocable.

112 (1848) 5 CB 895. The chief exposition of the common law is by Wilde CJ in this case, as follows:

The result appears to be, that where an agreement is entered into on a sufficient consideration, whereby an authority is given for the purpose of securing some benefit to the donee of the authority, such an authority is irrevocable. This is what is usually meant by an authority coupled with an interest, and which is commonly said to be irrevocable. But we think this doctrine applies only to cases where the authority is given for the purpose of being a security, or ... as a part of the security.

113 See *Bowstead & Reynolds on Agency* (18th Ed, 2006) at p 606, para 10-007.

114 See *Bowstead & Reynolds on Agency* (18th Ed, 2006) at p 606, para 10-007.

115 *Walsh v Whitcomb* (1797) 2 Esp 565. See also T M Aldridge, *Powers of Attorney* (10th Ed, 2007) at para 7-19. A distinction must be drawn between a power coupled with an interest, and a case in which the interest is only collateral to the power. The latter does not render the power irrevocable (*Chinnock v Sainsbury* (1860) 30 LJ Ch 409). An example of a collateral interest is a solicitor's lien for his costs over the deeds of property in respect of which his client has given him a power of attorney.

116 (1867) LR Eq 404 at 407.

aware, is not revocable". An example is a power given to a creditor to sell land and to retain the proceeds to repay himself.<sup>117</sup> Further, a power linked to a mortgage remains irrevocable until the money has been repaid.<sup>118</sup>

176 An irrevocable authority is not determined by the death, mental capacity or insolvency of the principal, nor, where the principal is a body corporate, by its winding up or dissolution.<sup>119</sup> This rule is justified on the general basis that what is in issue is a property right, which once granted, is unaffected by loss of capacity of the grantor.<sup>120</sup>

### **B. UK statutory law**

177 Special provisions as to the irrevocability of powers of attorney which are expressed to be irrevocable and given as security are laid down in ss 4 and 5(3) of the UK 1971 Act.

178 As explained by Trevor M Aldridge in his book *Powers of Attorney*,<sup>121</sup> the power in s 4 overlaps with the common law power. The definition in s 4 (that is, power given to secure either a proprietary interest of the donee, or the performance of an obligation owed to the donee) seems to make the class co-extensive with powers coupled with an interest.

179 Section 4 was enacted as a result of the recommendations of the English Law Commission in 1970 pursuant to its review of the law relating to powers of attorney.<sup>122</sup> The Law Commission recommended the repeal of ss 126 and 127 of the UK Law of Property Act 1925<sup>123</sup> and the enactment of ss 4 and 5(3) of the UK 1971 Act to replace ss 126 and 127 with modifications. These provisions are set out in a comparative table at Annex D.

---

117 *Gausson v Morton* (1830) 10 B & C 731.

118 *Barclays Bank Ltd v Bird* [1954] Ch 274.

119 *Bowstead & Reynolds on Agency* (18th Ed, 2006) Art 118(3) at p 605, para 10-006.

120 *Bowstead & Reynolds on Agency* (18th Ed, 2006) at p 607, para 10-007. See also the comment that the idea that such a power survives death and other losses of capacity is in fact not really supported by the old cases. In particular, it was difficult to see how a power of attorney to be exercised in the donor's name could be exercised after his death. Now however, a power of attorney can be executed in the donee's name: UK 1971 Act, s 7.

121 (10th Ed, 2007) at para 7-20.

122 Law Commission for England and Wales, *Report on Powers of Attorney* (Law Com No 30, September 1970) and *Working Paper on Powers of Attorney* (Working Paper No 11, June 1967).

123 The predecessor of ss 126 and 127 were ss 8 and 9 of the UK Conveyancing Act 1882. Sections 126 and 127 had repealed, with minor amendments only, ss 8 and 9 of the UK Conveyancing Act 1882. See Law Commission for England and Wales, *Working Paper on Powers of Attorney* (Working Paper No 11, June 1967) at para 22.

180 Section 126 related to a power of attorney “given for valuable consideration” which “is in the instrument creating the power expressed to be irrevocable”. Section 127 related to a power “whether given for valuable consideration or not” which “is in the instrument creating the power expressed to be irrevocable for a fixed time therein specified not exceeding one year ...”. In both cases, in favour of a purchaser, (a) the power could not be revoked without the concurrence of the donee, (b) any act done by the donee was effective notwithstanding purported revocation or death, disability or bankruptcy of the donor, and (c) neither the donee of the power nor the purchaser was adversely affected by notice of purported revocation or of the donor’s death, disability or bankruptcy. Where s 126 operated, the consequences in (a) to (c) applied for all time. Where s 127 operated, these applied only during the fixed time.<sup>124</sup>

181 Therefore, in the UK, before the 1971 Act came into force, there were two categories of irrevocable powers. Firstly, a power of attorney given for valuable consideration could be expressed to be irrevocable (s 126). Secondly, a power could be expressed to be irrevocable for a fixed term of up to one year (s 127). Once the period of irrevocability expired, the power did not become void. It continued as a revocable one. In that case, or if there had been no period of irrevocability, the donee could make a statutory declaration that he had not received any notice or information of the revocation of the power by death or otherwise.<sup>125</sup> A declaration made immediately before or within three months after an act performed under the power was conclusive proof of non-revocation at the time the act was made (s 124(2), repealed).

182 Section 4 of the UK 1971 Act was enacted to address the difficulties arising from ss 126 and 127 (repealed) of the UK Law of Property Act 1925. Section 4 does not require that the power be given for valuable consideration,<sup>126</sup> as did the earlier provision in the repealed s 126. Instead, the donee must have a proprietary interest, or some obligation must be owed to him. So long as the donee has the proprietary interest or the obligation to him remains undischarged, the power cannot be revoked by the donor unilaterally. Nor does the death, incapacity or bankruptcy of the donor affect it. Similarly, a power granted by a corporation is not revoked by the donor being wound up or dissolved.<sup>127</sup>

---

124 Law Commission for England and Wales, *Working Paper on Powers of Attorney* (Working Paper No 11, June 1967) at para 23.

125 T M Aldridge, *Powers of Attorney* (10th Ed, 2007) at p 131, para 17-05.

126 Giving sufficient consideration has sometimes been equated with coupling an interest with a power. Williams J in *Clarke v Laurie* (1857) 2 H & N 199 at 200 explained:

What is meant by an authority coupled with an interest being irrevocable is this, – that where an agreement is entered into on a sufficient consideration, whereby an authority is given for the purpose of securing some benefit to the donee of the authority, such an authority is irrevocable.

See T M Aldridge, *Powers of Attorney* (10th Ed, 2007) at p 60, para 7-20.

127 T M Aldridge, *Powers of Attorney* (10th Ed, 2007) at p 60, para 7-20.

(1) *Problems with ss 126 and 127*

183 The Law Commission described ss 126 and 127<sup>128</sup> as “the first” of “a number of sections which in obscurity probably surpass any in the whole of the 1925 legislation”.<sup>129</sup>

184 The Law Commission identified two main problems with ss 126 and 127:<sup>130</sup>

- (a) There was no reason why a distinction should be drawn between powers given for valuable consideration and other powers.<sup>131</sup>
- (b) It was not clear what exactly was achieved by these sections in providing “irrevocability” “in favour of a purchaser”.

(a) “Valuable consideration”

185 In relation to the first problem, the Law Commission studied the position at common law where the distinction is between authority “coupled with an interest” and other types of authority. The former cannot effectively be revoked because in reality they are not cases of agency at all but of proprietary interest given by way of security. The so-called “agent” is not acting as a fiduciary in the interests of his principal but in his own interests: see oft-quoted statement of Wilde CJ in *Smart v Sandars*.<sup>132</sup> In the American terminology, he has a “security-interest”, not an “agency-interest”: *Restatement of Agency* (2nd) sections 138 and 139. Valuable consideration is an essential feature of an agency coupled with an interest, but consideration alone does not suffice – the authority must be given by way of security (for example, an authority in an equitable mortgage, such as a debenture trust deed, to convey the legal estate on realising the security).<sup>133</sup>

186 The Law Commission submitted that there seemed to be two possible explanations why the legislature adopted instead a distinction based solely on valuable consideration. The first is that some of the earlier cases had suggested that this alone

---

128 The importance in practice of earlier powers of attorney which were expressed to be irrevocable is now mostly confined to powers forming part of the title to land. See T M Aldridge, *Powers of Attorney* (10th Ed, 2007) at p 61, para 7-21.

129 Law Commission for England and Wales, *Working Paper on Powers of Attorney* (Working Paper No 11, June 1967) at para 22.

130 Law Commission for England and Wales, *Working Paper on Powers of Attorney* (Working Paper No 11, June 1967) at paras 24–30.

131 Section 126 related to irrevocability of powers for valuable consideration while s 127 related to irrevocability of powers whether given for valuable consideration or not.

132 (1848) 5 CB 895 at 917.

133 Law Commission for England and Wales, *Working Paper on Powers of Attorney* (Working Paper No 11, June 1967) at para 24.

was sufficient to make the authority irrevocable and it might have been thought that the statutory provision merely codified the common law. However, this explanation was dismissed by the Law Commission as it did not seem very plausible for the contrary should have been clear long before 1882.<sup>134</sup>

187 The second possible explanation considered by the Law Commission is that it might have been thought that the presence or absence of valuable consideration was more easily ascertainable than the presence or absence of security interest so that, in the interests of conveyancing, any power of attorney given for valuable consideration should be deemed irrevocable in favour of a purchaser. This explanation was also dismissed by the Law Commission as it felt that if that had been the explanation, one would have expected s 126 to read “if a power of attorney is expressed to be given for valuable consideration ...”, but the provision did not state so. Under s 126, all that had to appear on the face of the instrument was that the power was irrevocable. It would then be irrevocable if in fact it was given for valuable consideration whether or not that appeared from the instrument.<sup>135</sup>

(b) “In favour of a purchaser”

188 With regard to the second problem identified by the Law Commission as to what exactly was achieved by ss 126 and 127 in providing “irrevocability” “in favour of a purchaser”, the Law Commission in its analysis found that where the power was given for valuable consideration and was expressed to be irrevocable (s 126 situation) or irrevocable for a fixed period (s 127 situation), then the power was in the complete sense irrevocable, indefinitely or during the prescribed time both as regards the donee and a purchaser from him, but where the power was not given for valuable consideration, the so-called irrevocability was merely a conveyancing device to protect a purchaser from the donee. The wording of the sections, however, seemed to preclude this simple answer. Both sections appeared to assume that the donee of the power and the purchaser were different persons.

189 “Purchaser” was defined in s 205(1) of the UK Law of Property Act 1925 as follows:

(xxi) ‘Purchaser’ means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property ...; and valuable consideration includes marriage but does not include a nominal consideration in money.

---

134 Law Commission for England and Wales, *Working Paper on Powers of Attorney* (Working Paper No 11, June 1967) at para 25.

135 Law Commission for England and Wales, *Working Paper on Powers of Attorney* (Working Paper No 11, June 1967) at para 25.

190 The Law Commission submitted that the mere fact that a person had in good faith given valuable consideration did not make him a purchaser so defined and under ss 126 and 127. He must also have acquired “an interest in property”. However, someone who had acquired for value and in good faith any property, real or personal, from or under the donee of the power would receive the protection of ss 126 and 127. The donee of the power would not be a purchaser merely because he had given consideration. However, it could be plausibly argued that if the power was coupled with an interest in the strict sense so that in addition to giving valuable consideration the donee acquired an interest in property he too would obtain protection under the sections. The Law Commission acknowledged that this result though sensible was not apparent on the face of the sections which, as pointed out, seemed to suggest that the donee and the purchaser must be different people.

191 If the Law Commission’s analysis is correct, then neither ss 126 nor 127 would make the power irrevocable *vis-à-vis* the donee unless the donee had a power coupled with an interest as well. In such a case, the donee and the purchaser from him were protected and the sections provided statutory support for the irrevocability at common law.

192 However, subsection (1)(iii) of both ss 126 and 127 appeared to afford protection to the donee even though he was not a purchaser (that is, one who has an authority coupled with an interest). Subsection (1)(iii) of s 126 read:

(iii) Neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice of anything done by the donor of the power without the concurrence of the donee of the power, or of the death, disability or bankruptcy of the donor of the power.

193 The Law Commission found this to be absurd. The Law Commission explained:

Can it be suggested that if X can persuade a gullible millionaire to sell him his ‘irrevocable’ power of attorney for £100, X can then continue to operate as his attorney notwithstanding his attempts to revoke any authority or notwithstanding his death or insanity? If a solicitor is appointed attorney of his client under a power expressed to be irrevocable for a period of one year, can it be suggested that the solicitor is entitled to ignore the client’s revocation, death, disability or bankruptcy during that year? Such a suggestion runs contrary to professional belief and practice which assume that the so-called ‘irrevocability’ under section 127 is a conveyancing device to enable the attorney to operate the power during the year without having to produce evidence that the power has not been revoked. Any suggestion that it entitles the attorney to continue to act notwithstanding revocation by the donor is quite contrary to what most solicitors have told their clients.

(2) *Law Commission's initial proposal to redraft ss 126 and 127*

194 The Law Commission added that if ss 126 and 127 were to be made sensible and readily intelligible, they had to be redrafted with a clear recognition that:<sup>136</sup>

- (a) powers of attorney granted by way of security could be made irrevocable in the truest and fullest sense either indefinitely or for a period; and
- (b) in other cases, no question of irrevocability would arise as between donor and donee, but in the interests of conveyancing if a power of attorney is expressed to last for a fixed period not exceeding one year, those having dealing with the donee during that period should be entitled to assume that the power has not been revoked.

195 In relation to para 194(a) above, the Law Commission acknowledged that there might be objections that the redraft of s 126 would narrow the ambit of the section by removing from it powers of attorney given for valuable consideration but not by way of security. In response to these objections, the Law Commission offered three answers:<sup>137</sup>

- (a) The redraft would not in fact narrow the ambit at all, but would instead state clearly what was already the probable effect of s 126, an effect which was obfuscated by the wording.
- (b) The Law Commission knew of no case in which anyone had given valuable consideration for a power of attorney where the power was not by way of security.
- (c) It was wholly wrong that a power of attorney should be irrevocable unless it was given by way of security. If the wording of s 126 encouraged individuals to exploit the provision by obtaining an irrevocable power of attorney with valuable consideration and then operate this power with impunity, then it should be reworded.

196 In relation to para 194(b) above, the Law Commission opined that s 127 had to be redrafted to make it clear that it applied to powers not granted by way of security and that its object was limited to simplifying conveyancing by protecting purchasers claiming from or under the attorney, and other persons having dealings with the attorney, but that it afforded no protection to the donee of the power after it had in fact

---

136 Law Commission for England and Wales, *Working Paper on Powers of Attorney* (Working Paper No 11, June 1967) at para 33.

137 Law Commission for England and Wales, *Working Paper on Powers of Attorney* (Working Paper No 11, June 1967) at para 35.



been revoked. To achieve this, the Law Commission suggested that it would be better if s 127 was stated to apply to powers “expressed to operate for a fixed period not exceeding one year” rather than to powers “expressed to be irrevocable for a fixed period not exceeding one year”.<sup>138</sup> The Law Commission added:<sup>139</sup>

At present solicitors have the embarrassing task of explaining to their clients that though the powers of attorney that they have drafted are expressed to be irrevocable this does not mean that in fact they are irrevocable, that actually they can be revoked at any time, and that the so-called irrevocability is merely a convenient device. Convenient it may be but it is not very creditable to the law that convenience can be achieved only by a misleading device. The task of explaining it away is particularly embarrassing when the solicitor is himself the donee of the power.

(3) *Law Commission’s recommendation to repeal ss 126 and 127*

197 In its report, the Law Commission found that its conclusion that ss 126 and 127 were difficult to construe and unsatisfactory in result and that the protection apparently intended to be conferred was often illusory was confirmed by those who responded to the Law Commission’s Working Paper during the consultation exercise.<sup>140</sup> Instead of redrafting ss 126 and 127, the Law Commission recommended repeal of the provisions and re-formulation by way of ss 4 and 5(3) of the UK 1971 Act.

(a) Section 4(1)

198 The Law Commission stressed that the only circumstances in which a power of attorney is truly irrevocable is when it is given to secure a proprietary interest vested in, or to protect an obligation owed to, the attorney. Since the power is exercisable for the attorney’s own protection, it cannot be revoked without his consent and it is not revoked by the death or incapacity of the donor.<sup>141</sup> In recommending s 4(1), the Law Commission explained:<sup>142</sup>

Recommendation (a) [*which is contained in section 4(1)*] in effect restates the common law position when a power is given by way of security, thus conferring an authority coupled with an interest.<sup>143</sup> The interest secured may

---

138 Law Commission for England and Wales, *Working Paper on Powers of Attorney* (Working Paper No 11, June 1967) at para 36.

139 Law Commission for England and Wales, *Working Paper on Powers of Attorney* (Working Paper No 11, June 1967) at para 36.

140 Law Commission for England and Wales, *Report on Powers of Attorney* (Law Com No 30, September 1970) at para 29.

141 Law Commission for England and Wales, *Report on Powers of Attorney* (Law Com No 30, September 1970) at para 30.

142 Law Commission for England and Wales, *Report on Powers of Attorney* (Law Com No 30, September 1970) at para 33.

143 At common law, a power of attorney coupled with an interest is irrevocable while that interest subsists.

either be proprietary (as where an equitable mortgage contains an irrevocable power of attorney to convey the legal estate if a power of sale is exercised) or an obligation (as where an underwriting agreement contains an irrevocable power to apply for shares left with the underwriters). Since the power is exercisable for the attorney's own benefit, the power is truly irrevocable without the consent of the attorney and is not revoked by the death or incapacity of the donor, thereby protecting the attorney, and incidentally, third parties having dealings with him. [footnote added]

199 The author of *Bowstead & Reynolds on Agency* commented that it may be that the UK Act aims to declare the common law in this respect, and hence can be cited as an indication of the common law position, but there are a number of differences. For example, under s 4, to be irrevocable, the authority must be contained in a power of attorney and so witnessed, and it must also be expressed to be irrevocable. Neither is true at common law. Further, s 4(1)(b) by referring to securing the performance of an obligation owed to the donee is in accordance with formulations of the law current at the time of drafting by going beyond security interests, but this goes further than the appropriate scope of the common law doctrine of authority coupled with an interest. By contrast, it has been suggested at common law that in the case of a grant of authority coupled with an interest, the interest need not be that of the donee of the power, but the wording of s 4 seems to exclude this possibility.<sup>144</sup>

200 The author of *Bowstead & Reynolds on Agency* also made other comments on or in relation to s 4, as follows:<sup>145</sup>

- (a) In the corporate sphere, s 4(1)(ii) only applies to winding up or dissolution, which leaves questions about these procedures and also about other insolvency procedures.
- (b) It is sometimes argued that the UK s 4 was intended to replace the common law, but there is no indication of this, and it will often be more convenient to rely on the possibly wider common law rules.
- (c) The UK Act contains protection for third parties where the power was expressed to be given by way of security but was in fact not so given. Such protection might be difficult to establish at common law.

(b) Section 4(2)

201 Section 4(2) provides that a power of attorney given to secure a proprietary interest may be given to the person entitled to that interest and to the persons deriving

---

144 *Bowstead & Reynolds on Agency* (18th Ed, 2006) Art 118(3) at para 10-008 [608].

145 *Bowstead & Reynolds on Agency* (18th Ed, 2006) Art 118(3) at para 10-008 [608–609].

title under him and those persons shall be duly constituted donees or attorneys. In other words, s 4(2) provides that such a power may be given to “A and his successors in title”. The effect of this, as explained by the Law Commission in the Explanatory Notes to the draft UK Powers of Attorney Bill,<sup>146</sup> is that the transfer of the secured interest will not cause the power to end or become revocable; so long as the interest remains in the successors, the power of attorney needed to protect it (for example, a power enabling an equitable mortgagee to convey the legal estate on a sale) will remain irrevocable. This is obviously needed when the power is given to secure a proprietary interest.<sup>147</sup>

(c) Section 5(3)

202 Section 5(3) accords protection to a third party dealing with the donee where the power is expressed to be irrevocable and to be given by way of security (whether or not the power is in fact so given). In such circumstances, unless the third party knows that the power was not in fact given by way of security, he is entitled to assume that the power can be revoked only with the concurrence of the donee and is protected unless he knows that it has been so revoked.<sup>148</sup>

203 The Law Commission in recommending the enactment of s 5(3) explained that s 5(3) was intended to replace s 126 of the UK Law of Property Act 1925 by affording protection to third parties. However, s 5(3) introduced four changes of substance in addition to substituting “by way of security” for “valuable consideration”.<sup>149</sup> The four changes are as follows:<sup>150</sup>

- (a) It makes it clear that it is dealing only with the position of third parties, but that it protects all persons who have dealings with the attorney. Section 126 was expressed to protect “purchasers” which causes confusion between third parties and the attorney (who may himself be a purchaser) and which, in the light of the statutory definition,<sup>151</sup> might be too narrow.

---

146 Law Commission for England and Wales, *Report on Powers of Attorney* (Law Com No 30, September 1970) at p 29.

147 Law Commission for England and Wales, *Report on Powers of Attorney* (Law Com No 30, September 1970) at para 33.

148 Explanatory Notes to the draft Powers of Attorney Bill in the English Law Commission’s *Report on Powers of Attorney* (Law Com No 30, September 1970) at p 31.

149 The English Law Commission explained that this was not regarded as a change of substance since it was highly unlikely (and undesirable) that a power would be given for valuable consideration except by way of security. See Law Commission for England and Wales, *Report on Powers of Attorney* (Law Com No 30, September 1970) n 26.

150 Law Commission for England and Wales, *Report on Powers of Attorney* (Law Com No 30, September 1970) at para 33.

151 Law of Property Act 1925 (c 20) (UK) s 205(1)(xxi).

- (b) It protects the third party so long as the power was *expressed* to be given by way of security. Section 126 protected him only if it was in fact for valuable consideration. Yet, the third party might have no means of telling. He should be entitled to rely on what the power says: indeed even under the existing law the courts would probably hold that the donor was estopped from denying it. It is obviously more satisfactory that protection should depend on express statutory provision rather than on the possible invocation of estoppel.
- (c) It protects the third party when unbeknown to the third party, the power has been revoked with the concurrence of the donee. Section 126 did not.
- (d) It makes it clear that the third party is not protected if he actually knew that events had occurred bringing the power of attorney to an end. If this was so under s 126, it was only because of an inference to be drawn from the statutory definition of a “purchaser” which required him to be a purchaser “in good faith”.

204 Trevor M Aldridge in his book *Powers of Attorney* explains that the 1971 Act tackles the problem that a third party dealing with a donee appointed by a power purporting to be given as security and expressed to be irrevocable cannot know whether it does truly come into the category of powers given as security in s 4. The 1971 Act does so by giving the third party equivalent protection, while not making the power irrevocable. Under s 5(3), if on the face of it a power is expressed to be given as security and to be irrevocable, a third party who does not know that it was not in fact given as security can assume that it is only revocable with the donee’s consent.<sup>152</sup> As between the donor and the donee, such a power is not irrevocable. A donee who continues to purport to exercise his authority once it has been revoked runs the risk of liability to the donor for any loss he causes.<sup>153</sup>

### **C. New South Wales**

205 In New South Wales, special provisions relating to irrevocable powers of attorney are laid down in ss 15 and 16 of the Powers of Attorney Act 2003. Although the earlier statutory provisions on this subject in New South Wales were derived from the English law, the current provisions in ss 15 and 16 depart substantially from the English law.

---

152 T M Aldridge, *Powers of Attorney* (10th Ed, 2007) at p 60, para 7-21.

153 T M Aldridge, *Powers of Attorney* (10th Ed, 2007) at p 61, para 7-21.

206 To have a better understanding of the position taken in New South Wales, the Committee undertook an analysis of the legislative developments in New South Wales, set out below. The relevant statutory provisions are set out in a comparative table at Annex E.

(1) *Prior to 1983*

207 Prior to 1983, the provisions relating to irrevocable powers of attorney were contained in ss 161, 162 and 162A of the Conveyancing Act 1919. Sections 161 and 162 corresponded almost exactly to ss 126 and 127 (repealed) of the UK Law of Property Act 1925, respectively.<sup>154</sup>

208 In 1974, the Law Reform Commission of New South Wales in its review of the law relating to powers of attorney recommended the repeal of ss 161, 162 and 162A and re-enactment of ss 161 and 162 with modifications in the form of a new s 160.<sup>155</sup> The New South Wales Commission found that the existing law was unsatisfactory, particularly because of perpetuated obscurities and anachronisms.<sup>156</sup>

209 The New South Wales Commission in recommending the repeal of ss 161 and 162 felt that the English Law Commission's criticism of ss 126 and 127 of the UK Act had direct relevance to ss 161 and 162.<sup>157</sup> However, the New South Wales Commission in recommending the enactment of the new s 160 to replace ss 161 and 162 departed from the English position as reflected in s 4 of the UK 1971 Act.

210 It is noted that s 162A of the New South Wales Conveyancing Act 1919 was not based on the English provisions and was added to the Conveyancing Act 1919 by the Conveyancing (Amendment) Act 1930 as part of a clarifying process.

(2) *From 1983 to 2003*

211 In 1983, the Conveyancing (Powers of Attorney) Amendment Act 1983 was enacted, implementing the Law Reform Commission's recommendations. The relevant

---

154 All the provisions had the common ancestry of ss 8 and 9 of the UK Conveyancing Act 1882 (45 & 46 Vict c 39). The only differences of any consequence were that s 162 of the New South Wales Act referred to a fixed time not exceeding two years while s 127 of the UK Act referred to a fixed time not exceeding one year. See New South Wales Law Reform Commission, *Working Paper on Powers of Attorney* (Working Paper 10, April 1973) at para 62.

155 New South Wales Law Reform Commission, *Report on Powers of Attorney* (Report 18, June 1974) and *Working Paper on Powers of Attorney* (Working Paper 10, April 1973).

156 New South Wales Law Reform Commission, *Report on Powers of Attorney* (Report 18, June 1974) at para 11.

157 New South Wales Law Reform Commission, *Working Paper on Powers of Attorney* (Working Paper 10, April 1973) at para 63.

provision relating to irrevocable powers was contained in the new s 160 of the Conveyancing Act 1919.

(3) *From 2004 to date*

212 The Powers of Attorney Act 2003 repealed the powers of attorney provisions in the Conveyancing Act 1919, and re-enacted the repealed provisions on irrevocable powers in the form of ss 15 and 16. Sections 15 and 16 are in substance the same as the repealed s 160 of the Conveyancing Act 1919. The Powers of Attorney Act 2003 came into operation on 16 February 2004.

(4) *Departure from English law*

213 As stated above, the repealed s 160 of the Conveyancing Act 1919 and ss 15 and 16 in the Powers of Attorney Act 2003 represent a departure from the English law.

214 The main difference between the New South Wales provisions and the English provisions is that s 160 of the New South Wales Conveyancing Act 1919 did not provide that irrevocable powers must be given by way of security. Valuable consideration alone would suffice. This is also the position in ss 15 and 16 of the New South Wales Powers of Attorney Act 2003.

215 The New South Wales Commission had considered the position of irrevocable powers of attorney under the English common law and decided not to adopt the English provision as there were some Australian decisions where powers of attorney given for valuable consideration were not granted by way of security.<sup>158</sup> The Commission was of the view that however unusual such powers of attorney might be in practice, it was possible to visualise other classes of power of attorney given for valuable consideration but not by way of security. Such classes would not fall within the ambit of s 4 of the UK 1971 Act. If the Commission were to recommend adoption of s 4 of the UK 1971 Act, the result would be to narrow the operation of s 161 of the New South Wales Conveyancing Act 1919. The Commission felt that it was not apparent that the community would gain anything by such a change, rather there would be a risk that prejudice and disadvantage might be created in some cases.<sup>159</sup>

---

158 New South Wales Law Reform Commission, *Working Paper on Powers of Attorney* (Working Paper 10, April 1973) at paras 69–78.

159 New South Wales Law Reform Commission, *Working Paper on Powers of Attorney* (Working Paper 10, April 1973) at para 79. See also New South Wales Law Reform Commission, *Report on Powers of Attorney* (Report 18, June 1974) at para 13 where the Commission stated that “we are disposed to think that legislation governing irrevocable powers of attorney needs to go beyond powers given ‘by way of security’”.

**D. Tasmania**

216 In Tasmania, the provisions on irrevocable powers of attorney are found in ss 24 and 25 of the Powers of Attorney Act 2000.<sup>160</sup> Section 24 provides for the irrevocable nature of a power of attorney given for valuable consideration and expressed in the instrument creating the power to be irrevocable. Section 25 provides for the irrevocable nature of a power of attorney, whether given for valuable consideration or not, expressed in the instrument creating the power to be irrevocable for a fixed period not exceeding one year.

**E. Hong Kong**

217 Section 4 of the Hong Kong Powers of Attorney Ordinance is *in pari materia* with s 4 of the UK 1971 Act.

**F. Malaysia**

218 The relevant legislative provision in Malaysia is s 6 of the Powers of Attorney Act 1949. Section 6, which provides for the irrevocable nature of powers of attorney given for valuable consideration and expressed in the instruments creating the powers to be irrevocable, is modelled after the repealed s 126 of the UK Law of Property Act 1925.

**G. Singapore**

219 Section 44 of the CLPA relates to a power of attorney “whether given for valuable consideration or not” which “is in the instrument creating the power expressed to be irrevocable for a fixed time therein specified”. In this case, during the fixed time in favour of a purchaser, (a) the power cannot be revoked without the concurrence of the donee, (b) any act done by the donee is effective notwithstanding the purported revocation or death, marriage, unsoundness of mind or bankruptcy of the donor, and (c) neither the donee nor the purchaser is adversely affected by notice of the purported revocation or of the donor’s death, marriage, unsoundness of mind or bankruptcy.

220 Section 44 is modelled after the repealed s 127 of the UK Law of Property Act 1925. There does not appear to be a Singapore equivalent of the repealed s 126 of the UK Law of Property Act 1925.

---

160 It is noted that ss 24 and 25 are substantially the same as ss 10 and 11 of the Powers of Attorney Act 1934, the predecessor to the Powers of Attorney Act 2000. Accordingly, there appears to be no substantial change in the law in Tasmania on irrevocable powers of attorney with the repeal of the 1934 Act and the enactment of the 2000 Act.

221 The Committee considered the English Law Commission's reasons for the repeal of s 127 and the New South Wales Law Reform Commission's reasons for the repeal of s 162 of the Conveyancing Act 1919 (which was modelled after s 127 of the UK Act).

222 The Committee noted the views of the English Law Commission that s 44 is difficult to construe. It is also not clear what is intended to be achieved by the section. Is it intended to give statutory recognition to irrevocable powers of attorney? Or is it used as a conveyancing short-cut to raise a presumption of the subsistence of a power within its declared period of "irrevocability", as in England?<sup>161</sup>

223 In New South Wales, the Law Reform Commission found little authority on the scope of s 162 of the New South Wales Conveyancing Act 1919, but doubted that it had ever been used as a conveyancing device or fiction. The New South Wales Commission was of the view that s 162 had been accepted literally to mean that a person may give a power of attorney with or without consideration for a period of up to two years and, in favour of a purchaser, render it irrevocable by expressing it to be so. However, the Commission said:<sup>162</sup>

It is difficult ... to imagine cases where a donor would, without consideration, purport irrevocably to appoint an attorney under power. Perhaps there could be instances where a spendthrift donor might seek to protect himself from his own mismanagement; but the section would not prevent him from revoking the power, which would be irrevocable only 'in favour of a purchaser'. Indeed he could still handle his own affairs. We think that the section has never had any practical application in this State ...

224 Further, it is not clear who are the persons intended to be protected under s 44. It would seem absurd to confer protection on the donee even after the events triggering revocation of the power have occurred (before the expiry of the fixed period) (this appears to be the effect of s 44(c)).

## ***H. Recommendation for Singapore***

225 Notwithstanding the comments of the English Law Commission and the New South Wales Law Reform Commission on their equivalent of the Singapore s 44, the Committee recommends that s 44 be retained as it makes it clear that it would be possible to give a power of attorney for a fixed period. The Committee further recommends that s 44 be transferred to the proposed Powers of Attorney Act. This appears as cl 6 in the proposed Powers of Attorney Bill at Annex A.

---

161 See comment by the New South Wales Law Reform Commission in its *Working Paper on Powers of Attorney* (Working Paper 10, April 1973) at para 82.

162 New South Wales Law Reform Commission in its *Working Paper on Powers of Attorney* (Working Paper 10, April 1973) at para 83.



226 In addition, it is recommended that a specific provision on irrevocable powers be introduced, as in most of the jurisdictions surveyed. In this regard, the Committee considered the UK and New South Wales provisions on irrevocable powers, that is, ss 4 and 5(3) of the UK 1971 Act and ss 15 and 16 of the New South Wales Powers of Attorney Act 2003.

227 The issue for consideration is whether irrevocable powers of attorney need to go beyond powers given by way of security. The New South Wales provision is wider as irrevocable powers need only be expressed to be given for valuable consideration.

228 One of the Committee members expressed concern that adopting the New South Wales provision might give rise to a potential loophole where an unscrupulous individual tries to avoid estate duty. For example, a person may obtain a power of attorney from his aged mother for valuable consideration (such as \$100). The power of attorney is expressed in the instrument creating it to be irrevocable. When his mother dies, he can rely on the New South Wales provision and claim that his power of attorney is irrevocable, whereupon he can dispose of his mother's property and avoid estate duty.

229 The Committee would prefer to confine irrevocable powers to powers of attorney granted by way of security, consistent with the common law position that an "authority" which is "coupled with an interest" is irrevocable so long as the interest of the donee exists. This is also the UK approach. As in s 4 of the UK 1971 Act, the interest secured may either be proprietary or an obligation. It is noted that the English Law Commission had stated that it was not aware of any case in which anyone had given valuable consideration for a power of attorney where the power was not by way of security.<sup>163</sup>

230 Accordingly, cl 7 of the proposed Powers of Attorney Bill at Annex A which provides for irrevocable powers is modelled after s 4 of the UK 1971 Act. Clause 8(3) which protects third parties in the case of an irrevocable power is modelled after s 5(3) of the UK 1971 Act.

## **VIII. Instruments Executed or Acts Done by Donee under Power of Attorney**

231 It is generally advisable and convenient for a donee to exercise the powers granted to him in the donor's name. If he contracts in his own name, and he can generally choose that alternative, the third party with whom he is dealing will not be

---

163 Law Commission for England and Wales, *Working Paper on Powers of Attorney* (Working Paper No 11, June 1967) at para 35.

put on notice that the donee is contracting on the donor's behalf. The donee then runs the risk of incurring personal liability.<sup>164</sup>

232 In Singapore and most of the jurisdictions surveyed, by virtue of legislation, any instrument executed or any thing done by a donee in his own name by the authority of the donor is treated as effective as if the instrument was executed or the thing done in the donor's name. A donee is given express statutory power to execute instruments with his own name. He may also do any other thing in his own name.<sup>165</sup>

### **A. Singapore**

233 The relevant provision in Singapore is s 45 of the CLPA. Subsection (1) provides that the donee may, if he thinks fit, execute or do any assurance, instrument or thing in and with his own name and signature and his own seal, where sealing is required, by the authority of the donor. Subsection (2) provides that every assurance, instrument and thing executed and done in this manner shall be as effectual in law as if it had been executed or done by the donee in the name and with the signature and seal of the donor.

234 The Committee proposes that a provision along the lines of s 45 be incorporated into the new Powers of Attorney Act. This provision is contained in cl 9(2) of the proposed Powers of Attorney Bill at Annex A. Unlike s 45 of the CLPA, cl 9(2) does not make any reference to the execution of documents under seal in view of a concern that there may be difficulties for some companies to adopt a seal. The Committee further proposes that s 45 of the CLPA be repealed to avoid any inconsistency.

235 It is noted that the Law Reform and Revision Division of the Attorney-General's Chambers in its report on the proposed Instruments (Formalities) Bill<sup>166</sup> has recommended the repeal of s 45 of the CLPA and recommended new provisions in the proposed Instruments (Formalities) Bill to provide for and give legislative effect to the execution of instruments and the doing of other acts by donees of powers of attorney. In particular, cl 8 of the proposed Instruments (Formalities) Bill provides for the manner in which an individual who is a donee of a power of attorney may execute instruments. Clause 8 is adopted from s 7 of the UK 1971 Act (as amended by the Law of Property

---

164 T M Aldridge, *Powers of Attorney* (10th Ed, 2007) at para 8-01. See also J F Josling, *Powers of Attorney* (4th Ed, 1976) at p 58, where it is stated that it is better for the donee to execute in the name of the donor as has always been permissible at common law (*London County Council v Agricultural Food Products Ltd* [1955] 2 Q B 218). This will relieve the donee of the possibility of personal liability.

165 Where there are joint donees, both should sign, but no particular wording is required other than referring to "donee" in the plural. Where more than one donee is appointed to act jointly or severally, one of more of them can sign, but no reference to the position is needed on the face of the document. See T M Aldridge, *Powers of Attorney* (9th Ed, 2000) at para 8-01.

166 Law Reform and Revision Division, Attorney-General's Chambers, *The Instruments (Formalities) Bill 2001* (LRRD No 1/2001, 1 October 2001).

(Miscellaneous Provisions) Act 1989 (c 34) (UK) Sched 1 para 7). Clause 6 of the proposed Instruments (Formalities) Bill provides for the execution of instruments by or on behalf of corporations.

236 In view of the overlap with the proposed Instruments (Formalities) Bill, cl 9 of the proposed Powers of Attorney Bill may be moved to the new instruments formalities law when the latter is enacted.

237 The following paragraphs set out the relevant provisions contained in the powers of attorney legislation of the jurisdictions surveyed.

## **B. UK**

238 In the UK, since 1925, an attorney could execute or do any assurance, instrument or thing, done or entered into on the donor's behalf under a power of attorney, in and with his own name and signature, and under his own seal, if he thought fit. This was provided in s 123 of the UK Law of Property Act 1925, which has since been repealed by the UK 1971 Act. Sections 7(1), 7(3) and 7(4) of the UK 1971 Act has replaced the repealed s 123.

239 Section 7(1)<sup>167</sup> of the UK 1971 Act provides for the execution of any instrument by the donee of a power of attorney with his own signature and for the doing of any other thing in his own name, by the authority of the donor of the power. Any document executed or thing done in this manner shall be as effective as if executed or done by the donee with the signature or in the name of the donor.

240 Section 7 arose from the English Law Commission's recommendations in its review on powers of attorney. The Law Commission had found practical difficulties with the common law rule that an attorney cannot execute a deed under seal unless authorised under seal. The Law Commission cited the example where a client signs and seals a deal leaving his solicitor to date and deliver it for him. The position seems to be that the solicitor cannot effectively do this unless authorised by seal. The Law Commission therefore suggested that the Powers of Attorney Act expressly state that the donee of a power of attorney or other agent may execute a deed in the name or on behalf of the donor if authorised to do so in the power or by the donor. However, this should not be limited to cases where the agent has a formal written authority. It would be highly inconvenient if solicitors always had to obtain formal written authority to

---

167 In 1989, s 7 of the UK 1971 Act was amended by the Law of Property (Miscellaneous Provisions) Act 1989 (c 34) (UK) Sched 1 para 7 to remove the reference to sealing in subsection (1). Section 7(1) is now restricted to the manner in which an individual who is a donee of a power of attorney may execute instruments.

date and hand over deeds on behalf of their clients and if the other party had to require production of the written authority.<sup>168</sup>

241 Section 7(1) is, in substance, identical with the repealed s 123(1) of the Law of Property Act 1925.<sup>169</sup> However, it has been opined that the enactment of s 7 appears to make it clear that no specific authority in the power is necessary.<sup>170</sup> Notwithstanding that, if he executes an instrument in his own name, he should also write “as attorney for and on behalf of the said (donor)”.<sup>171</sup> According to the authors of *Bowstead & Reynolds on Agency*, the effect of the section is to allow execution by an attorney in his own name, but the principal should be mentioned in the body of the deed, and though it may not be strictly necessary, it is highly desirable that the attorney should express that he executes as attorney or on behalf of the principal.<sup>172</sup>

242 Section 7(1) specifically provides for the situation where the donee is an individual. An instrument that is executed or any thing that is done by the donee in accordance with s 7(1) is good. However, where the donor or donee is a corporation, s 7(2) provides an alternative.

243 Section 7(2) declares that an instrument to which s 74(3) of the Law of Property Act 1925 applies may be executed either as provided in that subsection or in s 7. Prior to the amendments by the UK Law of Property (Miscellaneous Provisions) Act 1989, s 7(2) also contained a reference to s 74(4) of the Law of Property Act 1925. Section 74 relates to the execution of instruments by or on behalf of corporations. Sections 74(3) and 74(4) of the Law of Property Act 1925 deals with the execution of conveyances under a power of attorney granted by or to a corporation. The English Law Commission had thought that it was better not to incorporate these subsections in the UK 1971 Act as these relate solely to conveyancing transactions and therefore belong more appropriately to the Law of Property Act.<sup>173</sup> However, the Law Commission felt that it was desirable to make it clear that ss 74(3) and 74(4) provide optional alternatives

---

168 Law Commission for England and Wales, *Working Paper on Powers of Attorney* (Working Paper No 11, June 1967) at paras 57 to 59.

169 See Explanatory Notes to cl 6 of the draft Powers of Attorney Bill, proposed by the Law Commission for England and Wales in its *Report on Powers of Attorney* (Law Com No 30, September 1970) at the Appendix.

170 J F Josling, *Powers of Attorney* (4th Ed, 1976) at p 58.

171 J F Josling, *Powers of Attorney* (4th Ed, 1976) at p 58.

172 *Bowstead & Reynolds on Agency* (18th Ed, 2006) Art 118(1) at p 391, para 8-089.

173 Law Commission for England and Wales, *Report on Powers of Attorney* (Law Com No 30, September 1970) n 36. See also Explanatory Notes to cl 6 of the draft Powers of Attorney Bill, proposed by the Law Commission at the Appendix to its Report.

which, in the case of conveyances, can be used instead of the general method provided by s 7(1).<sup>174</sup>

244 Section 74(3) of the Law of Property Act 1925 expressly authorises the donee to sign the name of the corporation and to affix his own seal.<sup>175</sup> The donee is not entitled, as such, to affix the company's seal. A conveyance of property in the name of the corporation (including a corporation sole) may therefore be signed by the donee in the name of the corporation in the presence of at least one witness.<sup>176</sup> In this context, "conveyance" includes a mortgage, charge, lease or any other assurance of property, which would include a Land Registry transfer.<sup>177</sup> Execution of a deed under this provision would be in the following form:<sup>178</sup>

Signed on behalf of XYZ Limited for delivery as a deed in the presence of:	XYZ Limited [donor] by its attorney/donee
--	--

CD [witness]	AB [attorney/donee]
--------------	---------------------

245 Section 74(4) of the Law of Property Act 1925 applies to conveyances of interests in property where the donee is a corporation. In such a case, the corporation<sup>179</sup> may appoint an officer to execute the deed in the name of the donor. A purchaser may accept the execution of a document by an officer who appears to be appointed in accordance with s 74(4).<sup>180</sup> Thus, an instrument to convey an interest in property that appears to be executed by an officer so appointed is deemed, in favour of a purchaser, to have been executed by an officer who was duly authorised.<sup>181</sup> "Purchaser" here means a purchaser in good faith for valuable consideration and it includes a lessee and

---

174 Law Commission for England and Wales, *Report on Powers of Attorney* (Law Com No 30, September 1970) at para 37. See also Explanatory Notes to cl 6 of the draft Powers of Attorney Bill, proposed by the Law Commission at the Appendix to its Report.

175 The reference to the words "to affix his own seal" was deleted by the Law of Property (Miscellaneous Provisions) Act 1989.

176 Section 74(3) of the UK Law of Property Act 1925.

177 Section 205(1)(ii) of the UK Law of Property Act 1925.

178 T M Aldridge, *Powers of Attorney* (10th Ed, 2007) at para 8-02.

179 The board of directors, council or other governing body of the corporation may, by resolution or otherwise, appoint someone to execute deeds and other instruments in the donor's name.

180 J F Josling, *Powers of Attorney* (4th Ed, 1976) at p 63.

181 T M Aldridge, *Powers of Attorney* (10th Ed, 2007) at para 8-03. Section 74(4) is an alternative to the procedure in the Companies Act. Under the Companies Act, where a corporation is appointed donee, it may execute deeds on the donor's behalf under its own common seal (or by the signatures of a director and the secretary or two directors: Companies Act 1985 s 36A(4), Companies Act 1989 s 130(2)) as donee. This procedure is often inconvenient and an alternative is provided in s 74(4). The board of directors, council or other governing body of the corporation may, by resolution or otherwise, appoint someone to execute deeds and other instruments in the donor's name.

a mortgagee (s 205(1)(xxi)). It is therefore useful for the document to show the officer's authority on the face of it.

246 The reference to subsection (4) of s 74 in s 7(2) of the UK 1971 Act was deleted by the UK Law of Property (Miscellaneous Provisions) Act 1989 as part of the English reform on instruments formalities.

### **C. *New South Wales***

247 Section 43 of the New South Wales Powers of Attorney Act 2003 provides that an attorney under a power of attorney may, in the exercise of the power, execute any assurance or instrument with the attorney's own signature and, where sealing is required, with the attorney's own seal, or do any other thing in the attorney's own name. An assurance or instrument executed, or a thing done, in this manner is as effectual in law as if executed or done by the attorney with the signature and seal of the principal, or in the name of the principal (as the case may be).

248 Section 43 substantially re-enacts the provisions of s 159 (repealed) of the New South Wales Conveyancing Act 1919. According to the Explanatory Note to the New South Wales Powers of Attorney Bill 2003, this provision enables an attorney under a power of attorney to execute instruments and do other things in the attorney's own name.

### **D. *Tasmania***

249 Section 23 of the Tasmania Powers of Attorney Act 2000 provides that an attorney may execute any assurance or instrument or do any thing in the attorney's own name and by the attorney's own signature and by the attorney's own seal, where sealing is required, by the authority of the donor. An assurance, instrument or thing so executed or done has the same effect as if it had been executed or done by the attorney in the name and with the signature and seal of the donor.

### **E. *British Columbia***

250 Section 7 of the British Columbia Power of Attorney Act provides that a deed executed by an attorney under the seal of the attorney on behalf of a donor, whether an individual or corporation, is binding on the donor if it comes within the scope of the attorney's authority, and is of the same effect as if it were under the seal of the donor.

**F. Hong Kong**

251 The relevant provision in Hong Kong is s 6 of the Powers of Attorney Ordinance, which is largely modelled after s 7 of the UK 1971 Act (prior to the amendments thereto by the UK Law of Property (Miscellaneous Provisions) Act 1989).<sup>182</sup>

**G. Malaysia**

252 In Malaysia, the Powers of Attorney Act 1949 does not contain any provision to empower the donee to execute instruments or do any thing in his own name by the authority of the donor.

**IX. Statutory Form for Powers of Attorney**

253 In the light of the developments in other jurisdictions, the Committee considered whether a statutory form for powers of attorney should be introduced in Singapore, but decided against having such a form for reasons set out at paras 278 to 286.

254 A number of the jurisdictions surveyed provide for a statutory form of power of attorney, namely, the UK, New South Wales, Tasmania, British Columbia and Hong Kong. The statutory forms prescribed in these jurisdictions are set out at Annex F.

**A. UK**

255 The UK 1971 Act provides a statutory form of general power of attorney in s 10 and Sched 1. The English Law Commission in its consultation on the proposals contained in its Working Paper received strong feedback, especially from the banking and commerce sector, that it would be “eminently desirable to encourage greater standardisation of powers of attorney by providing a simple statutory form which could be adopted by reference”.<sup>183</sup>

---

182 It is noted that ss 6(2) and 6(3) of the Hong Kong Powers of Attorney Ordinance (Cap 31) differs from the UK provisions. Sections 6(2) and 6(3) state:

- (2) For the avoidance of doubt it is hereby declared that an instrument may be executed on behalf of a person by a donee of a power of attorney either as provided in this section or as provided in any other Ordinance.
- (3) This section is without prejudice to a provision in any other Ordinance requiring an instrument to be executed by a person specified therein.

183 Law Commission for England and Wales, *Report on Powers of Attorney* (Law Com No 30, September 1970) at para 38.

256 The Law Commission also received a strong recommendation from the Law Society to adopt such a course.<sup>184</sup> The Law Society submitted:

In the projected statute provision should be made for a short standardised form of power of attorney which would, by virtue of the statute, be conclusively presumed to authorise the attorney to perform either any act whatever that the donor himself could have performed personally, or any of the acts to be specified in a comprehensive list set out in a schedule to the statute. At present difficulties are experienced in practice because company registrars and other officials often take the view that a power of attorney cannot be regarded as authorising a particular transaction unless this transaction is specifically mentioned in the power itself, and they are sometimes not satisfied even by a formula expressed to authorise the donee to do anything the donee might do himself. This inevitably leads to general powers of attorney being loaded with unnecessary verbiage (as can be seen from the printed forms in common use) since every conceivable act which the donee might require to perform is expressly set out *ex abundanti cautela*. This situation arises from the tendency of the courts to construe a power of attorney against the donee, and although we doubt whether this rule always justifies the attitude taken, we submit that a statutory provision on the lines suggested above would help to simplify matters greatly in practice.

257 The Law Commission whilst acknowledging that some statutory forms had not led to their widespread use felt that a statutory form for power of attorney, similar to one under the Companies Act,<sup>185</sup> would be “a worthwhile experiment”. The Law Commission had one *caveat* though:<sup>186</sup>

The only *caveat* which we would enter is that while the adoption by reference of such a form is useful and appropriate when the attorney is to operate primarily in England it is unhelpful if he is to operate abroad. Commercial circles in this country can reasonably be assumed to have ready access to English statutes and will speedily become acquainted with the statutory form. The same cannot reasonably be expected of commercial circles abroad. If, therefore, the attorney is likely to have to operate in foreign countries it would be preferable not to adopt the statutory form or, if it is used, to attach to it a copy, signed by the donor, of the relevant provisions of the Act.

258 The Law Commission concluded that “the best way to achieve the objective of having a statutory form of general power which would avoid argument as to the extent of the authority conferred would be to provide in the Act itself that a power in the statutory form should confer on the attorney authority to do on behalf of the donor

---

184 See New South Wales Law Reform Commission, *Working Paper on Powers of Attorney* (Working Paper 10, April 1973) at para 167, which referred to the Memorandum of the Law Reform Committee of the Council of the [English] Law Society commenting on the Law Commission’s published *Working Paper on Powers of Attorney* (Working Paper No 11) at para 36.

185 Table A of the Companies Act.

186 Law Commission for England and Wales, *Report on Powers of Attorney* (Law Com No 30, September 1970) at para 38.



anything which the donor can lawfully do by an attorney. The power itself can then be a very simple one-paragraph document referring to the relevant section of the Act.”<sup>187</sup> The Law Commission was of the view that this would “quieten argument more effectively than any general words in the power itself (which, as experience shows, people are reluctant to take at their face value) or a long string of specific clauses which can never be all-embracing”.<sup>188</sup>

259 Thus, s 10(1) of the UK 1971 Act provides that a general power of attorney in the form set out in Sched 1 to the Act shall operate to confer on the donee authority to do on behalf of the donor anything which he can lawfully do by an attorney. In the Explanatory Notes to the draft Bill,<sup>189</sup> the Law Commission explained that in general, this means everything that the donor could do in his own person, but there are some acts which, under English law, can only be done personally and not by an agent, for example, marrying in England where marriage by proxy is not permitted.

260 However, in the case of the donor’s powers and discretions as a trustee, the Law Commission felt that the statutory form should not apply to a delegation thereof as the better practice would be to refer specifically to the trusts concerned.<sup>190</sup> This would be in line with the Law Commission’s recommendations in respect of the delegation of a trustee’s powers and discretions by power of attorney<sup>191</sup> where it would be important to identify the particular trusts involved since the delegation will be effective only if the requisite notices are given. Accordingly, s 10(1) of the UK 1971 Act is expressly subject to s 10(2) which provides that the statutory power of attorney does not cover the delegation by a trustee, personal representative, tenant for life or statutory owner within the meaning of the Settled Land Act 1925.

261 Section 10(1) of the UK 1971 Act provides for the power to be “in the form set out in Sched 1 to this Act, *or in a form to the like effect*”. In the Explanatory Notes<sup>192</sup> to the draft Bill, the Law Commission explained that the words in italics are customary when statutory forms are provided and make it clear that verbal differences are not fatal (for example, the form assumes that there will be not more than two attorneys whereas

---

187 Law Commission for England and Wales, *Report on Powers of Attorney* (Law Com No 30, September 1970) at para 39. In the Explanatory Notes to cl 9 of the draft Bill, the Law Commission explained that cl 9 implements the recommendations in paras 38 and 39 of the Report and “achieves the aim of enabling donors to grant a general power of appointment in the widest terms by the simple process of executing a one-paragraph instrument which refers to this clause.”

188 Law Commission for England and Wales, *Report on Powers of Attorney* (Law Com No 30, September 1970) at para 39. See Explanatory Notes to cl 9 of the draft Bill.

189 See Explanatory Notes to cl 9 of the draft Bill, para 2.

190 Law Commission for England and Wales, *Report on Powers of Attorney* (Law Com No 30, September 1970) at para 39.

191 The Law Commission’s recommendations led to the amendment of s 25 of the UK Trustee Act 1925 *vide* the UK 1971 Act. It is noted that s 27 of the Singapore Trustees Act is modelled after the UK provision.

192 Explanatory Notes to cl 9 of the draft Bill, para 3.

there may be three or more). The essential requirement is that the form used should contain a specific reference to the statutory provision.

## **B. *New South Wales***

262 Section 8 of the New South Wales Powers of Attorney Act 2003 provides for the creation of a prescribed power of attorney where an instrument (whether or not under seal) is in or to the effect of the form set out in Sched 2 and duly executed. Sections 9 to 13 set out the powers that are conferred by a prescribed power of attorney and the restrictions relating thereto.

263 The prescribed power of attorney replaces the statutory form for general power of attorney set out in the repealed s 163B and Sched 7 of the Conveyancing Act 1919. The prescribed power of attorney is a more comprehensive form than the one replaced.<sup>193</sup> The former statutory form was a result of the New South Wales Law Reform Commission's proposals pursuant to its review on powers of attorney in 1974.

264 In its report, the New South Wales Commission acknowledged that there was agreement among the commentators that a statutory short form of power of attorney would be desirable. There was also a suggestion that such a power should operate by reference to authorised acts specified in a comprehensive list in a statutory schedule. However, the Commission felt that it would be impracticable to devise a list to suit every case and preferred that the statute give effect to a power authorising the attorney under it to “do on behalf of the principal anything that the principal may lawfully authorise an attorney to do”, but the principal should be able, within the terms of the instrument, to limit or qualify the authority or otherwise regulate the operation of the power.<sup>194</sup>

265 The statutory form proposed by the New South Wales Commission differs from the English statutory form prescribed in the UK 1971 Act. In its Working Paper, the Commission explained that despite the widespread approval of a statutory short form and its evident acceptance in practice, it had some reservations about the unqualified wording of the English form. The Commission stated:<sup>195</sup>

---

193 At the Second Reading of the Powers of Attorney Bill 2003, the Minister explained that the new form proposed in the Bill (which replaced the former one in the Conveyancing Act 1919) “contains more information and more choices to enable people to make a better-informed decision about what they want to authorise their attorney to do. The new form – called a ‘prescribed power of attorney’ – will authorise the attorney to do anything that the principal may lawfully authorise an attorney to do, but will be subject to any conditions or limitations set out in the document. The prescribed form can be used to create either an ordinary power of attorney or, by having a prescribed witness complete the required certificate, create an enduring power of attorney.”

194 New South Wales Law Reform Commission, *Report on Powers of Attorney* (Report 18, June 1974) at paras 54–55.

195 New South Wales Law Reform Commission, *Working Paper on Powers of Attorney* (Working Paper 10, April 1973) at paras 169 and 171.

Amongst the legal profession, the [English] statutory form, to judge from published opinion, was acclaimed. In the *Law Society's Gazette* it was said of it that 'this should eliminate the acres of verbiage which are at present used, sometimes unsuccessfully, to achieve the same object'. *The New Law Journal* considered that 'in view of the great saving of time and trouble, and the increased certainty, afforded by this provision it is difficult to imagine that general powers of attorney will in future be granted in any other form'.

...

Despite the widespread approval of a statutory short form and its evident acceptance in practice, we have some reservations about the unqualified wording of the English form. A commendable desire to get away from verbiage may turn an abundance of caution into an abandonment of restraint. Powers of attorney are ordinarily given in aid of business transactions and are limited in scope by recitals such as 'for enabling the donee to manage, conduct and carry on my property affairs and business'. The English form contains no such limitation.

266 The Commission cited the decision of Lord Campbell LC in *Perry v Hall*<sup>196</sup> where the innocent donor of a power of attorney was held bound by a mortgage given by the donee in fraud of the donor. The fraud had become possible because of the width of the donee's authority.<sup>197</sup>

267 In its Working Paper, the Commission did not make specific proposals for a statutory power of attorney, but sought views on whether the legal and commercial circumstances warranted such a form, and if so, what should the contents be and whether it might lead to any saving of professional costs. The Commission, however, had some suggestions:<sup>198</sup>

If a standard short form power of attorney is desired in this State perhaps it should be expressly confined to the administration of the donor's property and business affairs. Powers which are required for other purposes would then be beyond the scope of the short form.

We believe that no short form should confer on the donee authority to discharge a function which the donor has as a trustee or legal personal representative. The office of trustee or legal personal representative attracts such special duties and responsibility that in our view its delegation always demands particular consideration of the terms in which the delegation is to be made. We believe too that a short form power of attorney should not be used in cases where the power is required for better assurance or for greater control of

---

196 (1860) 2 De GF & J 38; 45 ER 536.

197 New South Wales Law Reform Commission, *Working Paper on Powers of Attorney* (Working Paper 10, April 1973) at para 173.

198 New South Wales Law Reform Commission, *Working Paper on Powers of Attorney* (Working Paper 10, April 1973) at paras 174–175.

a secured asset. In the last mentioned case the donee of such a power would have a more extensive control over the affairs of the donee than would be appropriate in most cases involving an irrevocable power.

268 The suggested exclusions were implemented in s 163B(2) (repealed) of the Conveyancing Act 1919 and more recently, in ss 10 and 12 of the Powers of Attorney Act 2003. Section 10 provides that the prescribed power of attorney does not confer authority to exercise any function as a trustee. Section 12 provides that the prescribed power does not authorise an attorney to execute an assurance or other document, or to do any other act, to confer authority to confer benefits on the attorney, unless the instrument creating the power expressly authorises the conferral of the benefit.

269 Sections 11(1) and 13(1) of the Powers of Attorney Act 2003 contain further exclusions. Section 11(1) provides that the prescribed power does not confer authority to give gifts of all or any property of the principal to any other person, unless the instrument creating the power expressly authorises the giving of the gift. Section 13(1) provides that the prescribed power does not authorise an attorney to execute an assurance or other document, or to do any other act, to confer benefits on third parties, unless the instrument creating the power expressly authorises the conferral of the benefit. According to the notes that accompany the provisions in the Act, ss 11(1) and 13(1) restate a rule of the general law.

270 At the Second Reading of the Powers of Attorney Bill 2003, the Minister explained that these provisions would help clarify what an attorney can or cannot do in several common situations that have sometimes caused confusion in practice. For example, a prescribed power of attorney generally does not authorise an attorney to sign any document or do anything that would result in the attorney gaining a benefit at the expense of the principal or conferring a benefit on third parties. However, if the prescribed expression set out in Sched 3 is used, it will allow an attorney to confer on the attorney or third party a benefit only for expenses for housing, food, education, transportation and medical care or medication. This will allow, for example, a person who is an attorney for his spouse to use the spouse's money to pay for housing, food, *etc*, for the attorney and their children. The Minister said:

The new form of prescribed power of attorney set out in the Bill contains the prescribed expressions within the printed form, so that if left unamended, the attorney will only be able to do the things referred to in Schedule 3 as discussed above. This will help clarify for both the principal and the attorney what the attorney is authorised to do. If the principal wants to give the attorney more extensive powers, the principal can change the form.

271 In addition, the prescribed form for general power of attorney in Sched 2 to the Powers of Attorney Act 2003 contains "Important information for principals and attorney" at the end of the form. This information sets out, in particular, the common law duties of an attorney and registration of the power of attorney. It is interesting to note that the duties of an attorney are not codified in the legislation, but are instead provided in the form of guidance notes.

**C. Tasmania**

272 Section 18 of the Tasmania Powers of Attorney Act 2000 provides that a power of attorney may be made (a) by deed, or (b) in accordance with form 1, conferring particular powers specified in it, or (c) in accordance with form 2, conferring power on the attorney to do all things that the donor may lawfully authorise an attorney to do.

273 At the Second Reading of the Powers of Attorney Bill 2000 in Parliament, the Minister explained that this provision is “aimed at a simplification of the document required for the execution of powers of attorney”. An option is given – it would be possible to execute a power of attorney in the traditional deed format and it would also be possible to utilise the “short-term powers of attorney” which are set out in the Schedule.<sup>199</sup>

**D. British Columbia**

274 In British Columbia, s 9 of the Power of Attorney Act provides that a general power of attorney may be in Form 1 or Form 2 of the Schedule. A general power of attorney in either form confers authority on the attorney to do on behalf of the donor anything that the donor can lawfully do by an attorney, subject to the conditions and restrictions, if any, that are contained in the power of attorney. Form 1 is used where the intent is to confer authority on one attorney. Form 2 is used where there are more than one attorney acting separately or acting together.

**E. Hong Kong**

275 Section 7(1) of the Hong Kong Powers of Attorney Ordinance, which provides for the effect of 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 the Ordinance, is *in pari materia* with s 10(1) of the UK 1971 Act.

276 Section 7(2) provides that the statutory form does not apply to functions which the donor has as a trustee or personal representative.

**F. Malaysia**

277 There is no provision for a statutory form for powers of attorney in the Malaysia Powers of Attorney Act 1949.

---

199 See Second Reading speech by Mr Llewellyn (Lyons – Minister for Primary Industries, Water and Environment), House of Assembly (Lower House), Parliament of Tasmania, 5 October 2000.

### ***G. Recommendation for Singapore***

278 In Singapore, there is provision for a statutory form only in the case of general trustee powers of attorney. Section 27(5) of the Trustees Act provides for the delegation of a trustee's functions by power of attorney in the form set out in the Third Schedule, or in a form to the like effect but expressed to be made under s 27(5), to a single donee. The statutory form applies to a single trust which must be identified. The statutory form is a general form that applies to the delegation of the execution and exercise of all the trusts, powers and discretions vested in the donor as trustee under the single trust that is identified in the form.

279 Section 27(5) is modelled after s 25 of the UK Trustee Act 1925, as amended by the UK 1971 Act.

280 The Committee considered whether a statutory form should be prescribed for all general powers of attorney except trustee powers of attorney (and except lasting powers of attorney). Presently, there is no standard form that is used in practice, as can be seen from a search of the filed powers of attorney maintained by the Registry of Supreme Court. Some sample powers of attorney filed can be found at Annex B.

281 The Committee was divided in its views on whether it would be advantageous and convenient to donors and donees if a simple statutory form is provided as an option and given legislative effect, as in the UK, Tasmania, British Columbia and Hong Kong.

282 On the one hand, having a simple general form will provide guidance. On the other hand, as powers of attorney are strictly construed, it is unlikely that such a form will be used in practice. Solicitors are not likely to accept a general power of attorney which empowers the donee to do "anything" where, for example, it involves the sale of property or other assets. Further, it is unlikely that the local banks will allow a donee to open and operate an account in the name of the donor on the strength of a general power of attorney where the account is, for example, an overdraft account of millions of dollars. The solicitors for the purchaser of the property or the banks will demand specific powers of attorney in such cases. A simple general form will have very limited application, if any. In addition, having a general form can potentially open a can of worms by making it easy for illiterate persons to deceive their elderly parents. Some members of the Committee also opined that there is no real need to prescribe a general form as the current practice of getting solicitors to draft powers of attorney is working well.

283 One member of the Committee suggested that if a general form were to be adopted, the form should allow for a time period to be indicated, otherwise the power of attorney may continue indefinitely. Further, the Committee observed that the general form in the New South Wales Powers of Attorney Act 2003 and British Columbia Power of Attorney Act enables the donor to grant a general power of attorney subject to specified conditions and restrictions, if any. This is not found in the English general form.

284 The Committee also considered the desirability and usefulness of providing a form for particular power of attorney instead. In the Tasmania Powers of Attorney Act 2000, two types of statutory forms are provided in Sched 1: Form 1 for particular power of attorney, and Form 2 for general power of attorney. It is noted that Form 1 does not actually set out specific powers, but allows the donor to set out the specific powers to be given. The Committee considered but did not think that Form 1 would be useful in practice.

285 In its study, the Committee considered five options:

- (a) do not prescribe any form for power of attorney;
- (b) prescribe a form for general power of attorney that is unqualified, as in the English form;
- (c) prescribe a form for general power of attorney subject to specified conditions and restrictions, as in the New South Wales and British Columbia forms;
- (d) prescribe a form for particular power of attorney, as in the Tasmania Form 1; and
- (e) prescribe both a form for general power of attorney and a form for particular power of attorney, as in Tasmania.

286 On balance, the Committee felt that it was not necessary to have any statutory form for powers of attorney and expressed a concern that a statutory form could possibly be a trap for the unwary.

## **X. Other Issues**

287 The Committee considered a number of other issues relating to powers of attorney.

### ***A. Statement of duties of donee***

288 The duties of a donee are defined in common law. The issue is whether it would be desirable to re-state the duties in the new Powers of Attorney Act.

289 The Committee is of the view that it would not be necessary to codify the duties in the new Powers of Attorney Act. Such an exercise would not serve any useful purpose but would instead require the duties to be exhaustively stated in the Act as

there may be an impression that the duties of the donee are contained only in the express provisions in the Act.

290 It is noted that in the New South Wales Powers of Attorney Act 2003, some of the donee's common law duties are stated in the form of notes to the prescribed form for power of attorney in Sched 2 for information purposes only.

291 In the case of Singapore, the Committee suggests having a statement of the donee's duties on the Singapore Law website. This could be a useful guide to potential donors and donees before they proceed to execute a power of attorney.

### ***B. Revocation of powers of attorney by death***

292 At common law, death of the donor would revoke the power of attorney as the donor's death deprives the donee of anyone for whom he can act, unless it is an irrevocable power. An irrevocable power arises only in limited circumstances. This is also the position taken in the UK 1971 Act.

293 The Committee does not see any need to change this position in the case of Singapore. Such a change of position may have drastic implications. For example, if a power of attorney remains valid even after the donor's death, it would appear that there would no longer be a necessity to obtain a probate.

### ***C. Naming of donee by position or office***

294 In Singapore, there is currently a practice by some banks, especially foreign banks, to name donees by position or office, for example, General Manager of ABC Bank, rather than by the name of an individual. The Committee considered whether the proposed Powers of Attorney Act should accommodate this practice and whether a provision along the lines of s 26 of the Tasmania Powers of Attorney Act 2000 should be introduced.

295 Section 26 of the Tasmania Powers of Attorney Act 2000 provides for the appointment of attorney by class. It states:

#### **26. Appointment of attorney by class**

(1) A power of attorney is taken to be valid notwithstanding that the attorney is expressed to be appointed as a member of a specified class of persons.

(2) Where a person purporting to act as attorney of the donor under any such power of attorney states in writing that he or she is authorised to act as a member of the specified class—



- (a) any other person dealing with the purported attorney may rely on the statement as sufficient authority for him or her to act as such at the relevant time under the power of attorney; and
- (b) the statement is taken to be evidence that the purported attorney was, at the relevant time, authorised to act as such under the power of attorney.

296 Section 26 is intended to give statutory recognition to the practice frequently used by banks and other institutions of appointing the holder of a “position” or an “office” as the attorney rather than a named person to act as attorney. As explained by the Minister at the Second Reading of the Powers of Attorney Bill 2000 in the Parliament of Tasmania:<sup>200</sup>

A recent practice has developed over the last ten years or more, here and interstate, whereby when an institution makes a power of attorney it appoints a ‘position’ as the attorney rather than to nominate a person to act as an attorney. This type of attorney document is frequently used by banks and other institutions where there may be a number of persons occupying a position at any given time. Rather than having a separate power of attorney document executed every time a new person occupies that position, an attorney document is created to appoint an attorney by reference to the position the attorney holds rather than nominate a particular person.

There are some legal reservations about this current practice as there is no statutory authority for it. However, as it is now widespread and has been established in Tasmania for well over ten years and as it is a sensible solution to a practical problem, it would seem appropriate to give it legislative sanction. One of the important reasons for doing this is to give people dealing with an attorney acting under such a power some protection or relief from having to make excessive inquiries as to the bona fides of the person purporting to act as attorney in these cases.

The solution contained in this bill is to legislate to give statutory recognition to the existing practice and provide that a person may in a power of attorney appoint a class of persons to act as the donor’s attorney without naming any individual in that class of persons; and where a person who is a member of that class of people purports to act under that power of attorney as an attorney for the donor, states in writing that he or she is a member of that class of persons and is authorised to act as attorney, then the person dealing with that attorney is not under a duty to check that the attorney has authority to act under that power of attorney.

It would seem clear public policy that if institutions or other people chose to make powers of attorney of this kind, then the donor – that is, the person or

---

200 See Second Reading speeches on the Powers of Attorney Bill 2000 by Mr Parkinson (Wellington – Deputy Leader of the Government in the Council), Legislative Council (Upper House), Parliament of Tasmania, 24 October 2000 and by Mr Llewellyn (Lyons – Minister for Primary Industries, Water and Environment), House of Assembly (Lower House), Parliament of Tasmania, 5 October 2000.

institution making the power of attorney – should bear the consequences of improper use rather than force the ‘other side’ in the transaction to make impossible inquiries as to the authority of then attorney. This policy is reflected in the bill.

It is relevant to note that this issue of the need to ‘look behind’ the document is currently recognised by the banks and other institutions involved in these types of powers of attorney. A consumer protection provision is usually inserted in this type of power of attorney. These provisions purport to relieve the person dealing with the attorney from checking up on the attorney’s bona fides. There is considerable legal doubt about the effectiveness of these ‘consumer protection’ provisions in the absence of statutory authority for it. This bill will clear up the doubt in these cases.

297 The Committee, whilst acknowledging that having a provision along the lines of s 26 of the Tasmania Powers of Attorney Act 2000 would be useful especially for companies as they would not have to constantly issue new powers of attorney each time the incumbent officer left, felt that s 26(2) meant that the donor would have to be very cautious with its appointments.

298 Further, it could be argued that s 26(2) reflected a significant inroad into the doctrine of ostensible authority as it allowed the agent to declare himself as the agent. However, that does not appear to be the intent of s 26(2) which only creates an evidential presumption and in practice, a third party should never rely solely on the agent’s representation and should always check with the donor.

299 The Committee concluded that a provision such as s 26(2) might cause practical difficulty as it allows the donee to represent that he has authority to act. It should be for the donor to indicate so. The Committee decided against having a provision along the lines of s 26(2).

***D. Possible overlap between irrevocable powers of attorney and lasting powers of attorney***

300 In March 2007, the Minister for Community Development, Youth and Sports announced the Government’s intention to introduce a Mental Capacity Act to provide a statutory framework that allows individuals to make plans to appoint someone to make decisions on matters relating to health, welfare and/or finance on their behalf when they may lack capacity in the future. They can do this through a lasting power of attorney. The Mental Capacity Act 2008 was passed by Parliament on 15 September 2008 and assented to by the President on 2 October 2008. The Mental Capacity Act 2008 is not in operation yet.

301 Pursuant to s 11 of the Mental Capacity Act 2008, a lasting power of attorney, though made while the donor has capacity, operates only when the donor no longer has capacity. Where the donor has also granted an irrevocable power of attorney covering the same subject matter as the lasting power of attorney, an overlap between the two

types of power of attorney may arise as the irrevocable power of attorney remains valid even when the donor becomes mentally incapable.

302 The Committee considered whether the issue of overlap should be addressed in the proposed Powers of Attorney Act. In the UK, this overlap exists but the UK Mental Capacity Act 2005 does not deal with it. There is no consequential amendment to the UK 1971 Act where s 4 provides for irrevocable powers of attorney.

303 This overlap existed in the UK even before the enactment of the UK Mental Capacity Act 2005. There was an overlap between enduring powers of attorney under its predecessor the Enduring Powers of Attorney Act 1985 and irrevocable powers of attorney under the UK 1971 Act. In fact, the overlap would have arisen even before the enactment of the UK 1971 Act as the repealed s 127 of the UK Law of Property Act 1925 had given effect to irrevocable powers of attorney.

304 In the case of Singapore, even without the introduction of the proposed Powers of Attorney Act, the overlap would have arisen with the introduction of the Mental Capacity Act 2008. This is because of the existence of s 44 of the CLPA which is modelled after the repealed s 127 of the UK Law of Property Act 1925. An irrevocable power of attorney under s 44 of the CLPA would overlap with a lasting power of attorney under the Mental Capacity Act 2008 where they cover the same subject matter.

305 In the opinion of the Committee, the position should be that the irrevocable power of attorney given whilst the donor had capacity should prevail over the lasting power of attorney which is intended to be operational when the donor loses his mental capacity. Just as the donor would be bound by the irrevocable power of attorney given earlier to secure the interest of his creditor, the donee under the lasting power of attorney, who is entitled or intended to step into the shoes of the donor, now that the donor is no longer able to manage his own affairs, should also be bound by the arrangement which the donor had entered into with his creditor when he had the capacity to decide whether or not to give to the creditor the irrevocable power of attorney.

306 It is noted that the issue does not appear to be addressed by academic writers. Trevor M Aldridge in the latest edition of his book *Powers of Attorney* states that “[t]he donor’s mental capacity will not prejudice the authority of the attorney appointed under a lasting power, an enduring power (provided it is registered) or a power coupled with an interest”,<sup>201</sup> but does not go on to address the issue of overlap between a lasting power or enduring power on one hand and a power coupled with an interest on the other hand.

---

201 T M Aldridge, *Powers of Attorney* (10th Ed, 2007) at p 24, para 3.03.

307 The Committee considered two options:

- (a) leave the position silent, as in the UK; and
- (b) make the position clear by expressly providing in the proposed Powers of Attorney Act that the irrevocable power of attorney would prevail.

308 In the UK, the 1971 Act treats a power coupled with an interest or, as the Act terms it, a power given by way of security, in a special position. If the instrument creating it states that the power is to be irrevocable, a third party is entitled to assume that it can only be revoked by the donor with the donee's consent. The only exception to this is if the third party knows that the power was not in fact given by way of security. A third party dealing with a donee under this form of power has the protection of one who does not know of the revocation, unless he knows that it was revoked by the donor with the donee's consent (s 5(3) of the 1971 Act). Knowledge of a purported unilateral revocation by the donor does not remove the third party's protection.<sup>202</sup>

309 Therefore, in the UK, it is clear that third parties are clearly protected unless the third party knows that the power was not in fact given by way of security or that the power was revoked by the donor with the donee's consent. In the Committee's view, it could be because of this express statutory protection for third parties that the UK legislature thought it unnecessary to also expressly provide that the irrevocable power would prevail over all other types of power.

310 The Committee noted that option (b) would be good in the interests of legal certainty and clarity. However, there is no precedent in the UK or any of the other jurisdictions surveyed for such a statutory provision. Further, it is clear that the donor cannot grant a donee power to do something which he himself cannot do. If the donor has given an irrevocable power of attorney which is valid, effectual and binding, the donee of the irrevocable power of attorney would step into the shoes of the donor and the donor would no longer be capable of dealing with the same subject matter. Therefore, even if he grants a lasting power of attorney subsequently covering the same subject matter, the lasting power of attorney would not be enforceable in respect of that subject matter. In the circumstances, the Committee decided that option (b) would not be necessary. However, for certainty, the position may be set out in the Explanatory Statement to the Powers of Attorney Bill.

### ***E. Criminal sanction***

311 Section 49 of the New South Wales Powers of Attorney Act 2003 makes it an offence for an attorney under a power of attorney to do any act or thing under the

---

202 T M Aldridge, *Powers of Attorney* (9th Ed, 2000) at para 12-05.

power of attorney if he knows of the termination or suspension of his power. The maximum penalty is five years' imprisonment. The predecessor of s 49 is the repealed s 162A of the New South Wales Conveyancing Act 1919. The enactment of s 162A was a result of the New South Wales Law Reform Commission's recommendation that there should be "some statutory sanction against attorneys under power who act knowing their authority to have been terminated".<sup>203</sup>

312 The Committee considered whether it would be desirable to have such an offence in Singapore. In the absence of feedback to the contrary, the Committee is of the view that at present, it would not be desirable to provide for such a drastic measure. Further, as the Committee is recommending the filing of deeds of revocation, third parties would be able to ascertain the authority of a donee before entering into any transaction. There will not be any undue prejudice to third parties if the proposed Powers of Attorney Act does not provide for criminal sanction. There is no similar offence in the UK, Tasmania, British Columbia, Hong Kong and Malaysia powers of attorney legislation.

313 It is noted that at common law, a donee who knowingly represents to a third party that he has authority to act when he has not, and thereby causes loss to the third party, is guilty of the tort of deceit.<sup>204</sup>

#### ***F. Gratuitous powers of attorney***

314 The issue for the Committee's consideration is whether gratuitous powers of attorney should be made irrevocable.

315 An example of gratuitous power of attorney is a power of attorney granted to a family member. It is not clear to the Committee that a gratuitous power of attorney is intended to be irrevocable. In practice, there may be cases where the donor wishes to grant a power of attorney to another person. In order to avoid any overlap or conflict, the donor should be allowed to revoke the earlier power of attorney which he granted gratuitously.

316 It is noted that at common law, only authority granted by deed or for valuable consideration for purpose of effectuating any security or protecting or securing an interest of the donee is irrevocable. Such authority is irrevocable during the subsistence of the donee's interest. A gratuitous power of attorney would not constitute such authority.

---

203 New South Wales Law Reform Commission, *Report on Powers of Attorney* (Report 18, June 1974) at para 44.

204 *Polhill v Walter* (1832) 3 B & Ad 114. See T M Aldridge, *Powers of Attorney* (9th Ed, 2000) at para 12-14.



**ANNEX A:**

**PROPOSED POWERS OF ATTORNEY BILL**

# **Powers of Attorney Bill**

---

**Bill No. .../20xx.**

*Read the first time on ..... 20xx.*

## **POWERS OF ATTORNEY ACT 20xx<sup>[\*]</sup>**

**(No. .... of 20xx)**

### **ARRANGEMENT OF SECTIONS**

#### **Section**

1. Short title and commencement
  2. Interpretation
  3. Execution of instruments creating powers of attorney
  4. Filing of powers of attorney
  5. Proof of contents of instruments creating powers of attorney
  6. Effect of powers of attorney, for value or not, made irrevocable for fixed time
  7. Powers of attorney given as security
  8. Protection of donee and third persons where power of attorney is revoked
  9. Execution of documents, etc., by donee of powers of attorney
  10. Consequential and related amendments to other Acts
  11. Savings and transitional provisions
- The Schedule — Consequential and related amendments to other Acts

---

\* The references to other Acts and statutory provisions in square brackets indicate the legislative source of the proposed provisions.

Unless otherwise stated, the abbreviations used in the references are references to the following Acts and statutory provisions:

UK LP Act	:	UK Law of Property Act 1925 (c 20)
UK PA Act	:	UK Powers of Attorney Act 1971 (c 27)
Singapore CLPA	:	Singapore Conveyancing and Law of Property Act (Cap 61, 1994 Ed)
Singapore Rules of Court	:	Singapore Rules of Court (Cap 322, R 5, 2006 Ed)



A BILL

*i n t i t u l e d*

An Act to make new provisions in relation to powers of attorney and provide for matters connected therewith, and to make consequential and related amendments to certain other written laws.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

### **Short title and commencement**

1. This Act may be cited as the Powers of Attorney Act 2009 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

### **Interpretation**

5 2. In this Act, unless the context otherwise requires —

“commissioner for oaths” has the same meaning as in section 68 of the Supreme Court of Judicature Act (Cap. 322);

“donee”, in relation to a power of attorney, means a person to whom the authority or power is given;

10 “donor”, in relation to a power of attorney, means the person giving the authority or power;

“notary public” has the same meaning as in the Notaries Public Act (Cap. 208);

15 “purchaser” means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property.

*[UK LP Act, s 205(1)(xxi) modified]*

### **Execution of instruments creating powers of attorney**

20 3.—(1) An instrument creating a power of attorney conferring power on or authorising the donee to execute or deliver a deed on behalf of the donor shall be executed as a deed.

(2) This section is not in derogation of any rule of law relating to the execution of instruments creating powers of attorney.

### **Filing of powers of attorney**

4.—(1) Subject to subsections (2) to (4) —

25 (a) any instrument creating a power of attorney, its execution being verified by affidavit, statutory declaration, notarial certificate or other sufficient evidence;

30 (b) a certified copy of the instrument referred to in paragraph (a) duly compared therewith and marked by the Registrar of the Supreme Court with the words “certified copy”; or

- (c) if the instrument referred to in paragraph (a) is registered in Malaysia, an office copy thereof,

may be filed in the Registry of the Supreme Court.

*[Singapore CLPA, s 48(1)(a) modified]*

- 5 (2) An instrument creating a power of attorney shall not be filed unless the execution of the instrument has been verified in accordance with the Rules of Court and the instrument is accompanied by the affidavit, statutory declaration, notarial certificate or other evidence by which the execution was verified.

*[Singapore CLPA, s 48(1)(c); Singapore Rules of Court, O 60 r 6(1)]*

- 10 (3) A certified copy of an instrument creating a power of attorney shall not be filed unless —

(a) the execution of the instrument has been verified in accordance with the Rules of Court;

15 (b) the signature of the person who verified the copy is sufficiently verified; and

(c) the copy is accompanied by the affidavit, statutory declaration, notarial certificate or other evidence by which the execution was verified.

*[Singapore CLPA, s 48(1)(c); Singapore Rules of Court, O 60 r 6(2)]*

- 20 (4) An instrument creating a power of attorney in a foreign language shall not be filed unless the instrument is accompanied by a translation thereof —

(a) certified by a sworn interpreter of the court; or

(b) verified by a statutory declaration of a person qualified to translate if there is no interpreter attached to the court sworn to interpret in the language in which the instrument is written.

25 *[Singapore CLPA, s 48(2)]*

(5) A file of the instruments filed under this section shall be kept, and any person may search that file and inspect every instrument so filed, and an office copy thereof and of the translation thereof, if any, shall be delivered out to him on request.

*[Singapore CLPA, s 48(3)]*

- 30 (6) A copy of an instrument filed under this section may be presented at the Registry of the Supreme Court, and may be stamped or marked as an office copy, and when so stamped or marked, shall constitute an office copy.

*[Singapore CLPA, s 48(4)]*

(7) An office copy of an instrument filed under this section shall without further proof be sufficient evidence of the contents of the instrument and of the filing thereof in the Registry of the Supreme Court.

*[Singapore CLPA, s 48(5)]*

5 (8) If the instrument filed under this section is in a foreign language, an office copy of the translation filed with the instrument shall without further proof be admissible in evidence as a correct translation of the original document.

*[Singapore CLPA, s 48(6)]*

10 (9) The fees to be taken in the Registry of the Supreme Court for the purposes of this section shall be fixed by the Chief Justice.

*[Singapore CLPA, s 48(7)]*

(10) Any reference in subsections (4) to (8) to an instrument shall be deemed to include a reference to a certified or an office copy of the instrument filed in accordance with this section.

15 *[Singapore CLPA, s 48(10)]*

(11) If an instrument creating a power of attorney filed under this section is revoked, the instrument revoking the power may be filed in the Registry of the Supreme Court, and the power shall be deemed to have been duly revoked as from the date of filing of the instrument revoking the power.

20 *[Singapore CLPA, s 48(8) modified]*

### **Proof of contents of instruments creating powers of attorney**

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

- 25
- (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 solicitor, commissioner for oaths or notary public:
    - 30 (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 2 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.

5 (3) This section is without prejudice to section 3 and any other method of proof authorised by law.

*[UK PA Act, s 3]*

### **Effect of powers of attorney, for value or not, made irrevocable for fixed time**

10 **6.** If a power of attorney, whether given for valuable consideration or not, is in the instrument creating the power expressed to be irrevocable for a fixed time therein specified, then in favour of a purchaser —

- 15 (a) the power shall not be revoked for and during that fixed time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, marriage, loss of capacity or bankruptcy of the donor of the power;
- (b) any act done within that fixed time by the donee of the power in pursuance of the power shall be as valid as if anything done by the donor of the power, without the concurrence of the donee of the power, or the death, marriage, loss of capacity or bankruptcy of the donor of the power had not been done or happened; and
- 20 (c) neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice either during or after that fixed time of anything done by the donor of the power during that fixed time without the concurrence of the donee of the power or of the death, marriage, loss of capacity or bankruptcy of the donor of the power within that fixed time.
- 25

*[CLPA s 44]*

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

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

- 30 (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, loss of capacity or bankruptcy of the donor or, if the donor is a body corporate, by its winding up or dissolution.

5 (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, whether before or after the date of commencement of this Act.

10 *[UK PA Act, s 4 modified]*

### **Protection of donee and third persons where power of attorney is revoked**

8.—(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.

20 (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.

25 (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 —

- 30 (a) the transaction between that person and the donee was completed within 12 months of the date on which the power came into operation; or
- (b) that person makes a statutory declaration, before or within 3 months after the completion of the purchase, that he did not at the material time know of the revocation of the power.

35 (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 of attorney was created whether before or after the commencement of this Act but only to acts and transactions after the commencement of this Act.

*[UK PA Act, s 5]*

5 **Execution of documents, etc., by donee of powers of attorney**

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

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

10 by the authority of the donor of the power.

(2) Any document executed or thing done in the manner under subsection (1) shall be as effective as if executed or done by the donee in the name of the donor of the power.

(3) This section applies whenever the power of attorney was created whether before or after the commencement of this Act.

15 *[Singapore CLPA, s 45]*

**Consequential and related amendments to other Acts**

10. The provisions of the Acts specified in the first column of the Schedule are amended in the manner set out in the second column thereof.

**Savings and transitional provisions**

20 11. Any power of attorney deposited in the Registry of the Supreme Court under section 48 of the Conveyancing and Law of Property Act (Cap. 61) before the commencement of this Act shall be deemed to have been filed under section 4 of this Act.

## THE SCHEDULE

Section 10

### CONSEQUENTIAL AND RELATED AMENDMENTS TO OTHER ACTS

*First column*

*Second column*

- |   |  |
|---|--|
| (1) Conveyancing and Law of Property Act (Chapter 61, 1994 Ed.) |  |
| (a) Section 8(2) and (3)  | Delete the words “section 48” and substitute the words “section 4 of the Powers of Attorney Act 2009”.   |
| (b) Part X  | Repeal.  |
| (2) Evidence Act (Chapter 97, 1997 Ed.)                         |  |
| Section 87  | Insert, immediately after the words “or any”, the word “solicitor”.  |
| (3) Land Titles Act (Chapter 157, 2004 Ed.)                     |  |
| (a) Section 147(2)  | Delete the words “section 48 of the Conveyancing and Law of Property Act (Cap. 61)” and substitute the words “section 4 of the Powers of Attorney Act 2009”. |
| (b) Section 147(3)(a) and (b)                                   | Delete the words “section 48 of the Conveyancing and Law of Property Act” and substitute the words “section 4 of the Powers of Attorney Act 2009”.           |
| (4) Registration of Deeds Act (Chapter 269, 1989 Ed.)           |  |
| Section 10  | Delete the words “section 48 of the Conveyancing and Law of Property Act” and substitute the words “section 4 of the Powers of Attorney Act 2009”.           |



---

## EXPLANATORY STATEMENT

This Bill seeks to enact a new Powers of Attorney Act and makes consequential and related amendments to certain other written laws. The Bill implements the recommendations of the Law Reform Committee of the Singapore Academy of Law in its report on Powers of Attorney.

Clause 1 relates to the short title and commencement.

Clause 2 defines certain terms used in the Bill.

Clause 3 provides for the execution of instruments creating powers of attorney. An instrument creating a power of attorney must be executed as a deed if it confers power on or authorises the donee to execute a deed or deliver a deed on the donor's behalf. The clause also provides that the section is not in derogation of any rule of law relating to the execution of instruments creating powers of attorney.

Clause 4 deals with the filing of instruments creating powers of attorney and instruments revoking powers of attorney in the Registry of the Supreme Court. Filing of such instruments is voluntary. This clause will replace the relevant provisions on deposit of powers of attorney in the Conveyancing and Law of Property Act (Cap. 61) and the Rules of Court.

Clause 5 provides how the contents of instruments creating powers of attorney may be proved.

Clause 6 re-enacts section 44 of the Conveyancing and Law of Property Act, which provides for the effect of powers of attorney made irrevocable for a fixed time. Section 44 will be repealed.

Clause 7 provides for powers of attorney which are expressed to be irrevocable and are given to secure a proprietary interest of the donee or the performance of an obligation owed to the donee.

An irrevocable power of attorney under clause 6 or 7 is not affected by the loss of capacity of the donor within the meaning of the Mental Capacity Act 2008 (Act 22 of 2008) and consequently, it is also not affected by any lasting power of attorney made under that Act.

Clause 8 provides for the protection of the donee and third parties where a power of attorney is revoked without the donee's knowledge or the knowledge of a person dealing with the donee.

Clause 9 relates to the execution of documents and doing of other things by the donee. Any document executed or thing done by the donee in the manner specified in subsection (1) of the clause is as effective as if executed or done by the donee in the name of the donor.

Clause 10 (to be read with the Schedule) makes consequential and related amendments to certain written laws.

Clause 11 provides for savings and transitional matters relating to the powers of attorney deposited in the Registry of the Supreme Court under section 48 of the Conveyancing and Law of Property Act prior to the commencement of the Bill. Such powers of attorney are deemed to have been filed under clause 4.

#### EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.

---

**ANNEX B:**

**SAMPLE POWERS OF ATTORNEY  
FILED AT  
THE REGISTRY OF THE SUPREME COURT,  
SINGAPORE**

## POWER OF ATTORNEY

Dated \_\_\_\_\_

**KNOW ALL MEN BY THESE PRESENTS** that we, \_\_\_\_\_, a company incorporated in \_\_\_\_\_, having its principal place of business at \_\_\_\_\_, and a place of business in Singapore and having its registered Singapore office at \_\_\_\_\_ (hereinafter called the "Bank"),

DO HEREBY APPOINT

\_\_\_\_\_ (FIN no. \_\_\_\_\_)  
Domiciled at \_\_\_\_\_  
(hereinafter called the "Attorney"),

acting jointly with any other attorney authorized for the Bank's Singapore Branch or with any Manager of the Bank,

to be our true and lawful Attorney with full and general power and authority to manage and conduct our business and affairs in the Republic of Singapore according to the statutes of the said Bank and without prejudice to the generality of the foregoing authority and by way of enumerating some of the powers which it is intended to repose in our Attorney.

WE DECLARE that our Attorney shall have full power to do and concur in all or any of the following acts and things:

1. to discount, negotiate and renew bills of exchange and promissory notes, with or without security, to accept deposits to open and keep drawing deposit and discount accounts, to draw, accept, make and endorse bills of exchange, promissory notes, cheques, warrants, bills of lading, delivery orders and other negotiable instruments.
2. to demand and enforce payment, delivery and transfer of all debts, monies, securities for money and claims of all kinds and to demand and enforce delivery and receive and take possession of store and warehouse goods, produce and property of all kinds, whether belonging to us or held by us as security or in trust or held by any person or company of by way of security for us.
3. to make proof of debts and claims under the bankruptcy or insolvency of any person or firms, or in the liquidation or winding-up of any companies and to represent and act for us in all such matters and on our behalf to vote and take part in the election of assignees, trustees or liquidators, and in all other meetings and proceedings as our Attorney may think fit and as fully and effectually to all intents and purposes as if

the case of each such bankruptcy, insolvency, liquidation or winding-up, a special power of attorney was granted by us to the said Attorney authorizing and empowering him so to act.

4. to sell or pledge any shares or interests in public or other loans and all other stocks, funds, shares, securities and investments whatsoever.
5. to negotiate and issue, and take part in the negotiation or issuing, of any loan or loans of the Government of the Republic of Singapore or of any foreign state or dominion or any provincial or municipal loan, or the bonds, debentures, stock or capital of any kind of any company, and to act as Agent for the collection and distribution of any dividends, interest, drawings, repayments and other payments in relation to any such loan or issue.
6. to commence, prosecute and defend all actions, suits or legal proceedings, whether civil or criminal including proceedings to procure or establish the bankruptcy or insolvency of any persons or firms, or the liquidation or winding-up of any company, to enforce by all lawful means any judgment, decree of order, or to discontinue and abandon any proceedings.
7. to make, sign, seal, execute, deliver and endorse all such receipts, releases, deeds, conveyances, reconveyances, reassignments, postponements, transfers, assurances and instruments whatsoever as our Attorney shall think fit.
8. to give effectual receipts and discharges for all monies, negotiable instruments, goods, merchandise or property of any kind, and upon the settlement and discharge of all accounts, reckonings, claims and demands whatsoever.
9. to keep such registers and accounts, and to make such returns and render all such particulars as are required by the regulations of any Government or local authority as we ought to keep, render or make.
10. For all or any purposes hereby authorized to appear on our behalf in all Courts and before all Judges, Magistrates and other officers and to acknowledge this power of attorney and all other deeds and instruments whatsoever, sealed or to be sealed by us, or by or on our behalf by our Attorney and to do and perform all and whatever shall be necessary of duly registering, recording and otherwise authenticating the same in due form of law.

Lastly,

We do hereby ratify and confirm, and agree to ratify and conform, all and whatsoever our said Attorney shall lawfully do or cause to be done by virtue of this power, subject nevertheless to the statutes which may be from time to time binding upon us, it being declared that all acts and transactions of such Attorney shall, notwithstanding any prior

revocation of this power, be valid and effectual, unless such revocation shall have been previously notified to the person or persons acting or dealing with the said Attorney.

IN WITNESS WHEREOF

We, being a \_\_\_\_\_ company and having no common seal, have executed this Power of Attorney the day and year first above written.

This Power of Attorney will expire on the \_\_\_\_\_ unless previously revoked or cancelled and on and after said date all powers hereby granted shall wholly cease.

By

\_\_\_\_\_

I, \_\_\_\_\_, Notary duly authorized residing and practising in \_\_\_\_\_, DO HEREBY CERTIFY AND ATTEST that the above Power of Attorney has been executed by \_\_\_\_\_, represented by \_\_\_\_\_, its General Manager, in accordance with the regulations of the said Company, which regulations have been produced to and deposited with me.

IN TESTIMONY whereof I have hereunto subscribed my name and affixed my seal of office.

“Mr Attorney \_\_\_\_\_

certify the materiality of the

signature of \_\_\_\_\_

as affixed beside”

## POWER OF ATTORNEY

**A POWER OF ATTORNEY** created this \_\_\_\_\_ day of \_\_\_\_\_ by me, \_\_\_\_\_, (Germany Passport No. \_\_\_\_\_) of \_\_\_\_\_, Germany.

### **WHEREAS:-**

- A) \_\_\_\_\_ (Germany Passport No. \_\_\_\_\_) (hereinafter called "the Deceased") late of \_\_\_\_\_, Germany, died in \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_ 2005 domiciled in Germany.
- B) On the \_\_\_\_\_ day of \_\_\_\_\_, a Certificate of Inheritance of the estate of the Deceased was granted by [name of court], Germany, to me as sole heir of the Deceased's estate and the same was issued by [name of court] Germany, on the \_\_\_\_\_ day of \_\_\_\_\_.
- C) The Deceased died possessed of or entitled to certain movable and/or immovable property situated in Singapore.
- D) Being unable to personally proceed in the Republic of Singapore, I am desirous of appointing an Attorney to represent and act for me there as hereinafter mentioned.

**NOW THIS DEED WITNESSETH** that I, the said, \_\_\_\_\_ do hereby appoint \_\_\_\_\_ (German Passport No. \_\_\_\_\_), an Attorney-at-Law practising German law in the firm of \_\_\_\_\_, Singapore, at \_\_\_\_\_ (hereinafter called "my Attorney"), to be my true and lawful Attorney for me and in my name or on my behalf in the Republic of Singapore to do the following acts and things or any of them that is to say:-

1. To apply to the High Court of the Republic of Singapore or other proper Court having jurisdiction in the premises for a Grant of Letter of Administration with Will annexed of the estate of the Deceased, and to take all such steps as may be necessary to obtain such Grant or other lawful representation within Singapore to the intent that the same may have full force and effect pursuant to any Act of Parliament or local statute for the time being in force in Singapore and to enter into all such liabilities and execute all such deeds, affidavits, documents and cause papers (if any) that may legally be required for such purposes.
2. To apply to the Commissioner of Estate Duties or other competent authority, if relevant, for the clearance in respect of the payment of the estate duty if any on the

estate of the Deceased in Singapore and matters ancillary thereto and to execute all affidavits, documents, deeds and acts that may be required for such purposes.

3. To demand, sue for, enforce payment and receive and give effectual receipts and discharges for all monies, securities for monies, debts, goods, chattels, movable and immovable property which now or at any time hereafter may belong to or form part of the estate of the Deceased in Singapore.

4. To sell and convert into money any movable property belonging to the Deceased situate in Singapore such times and at such prices and subject to such conditions as my Attorney shall think fit and upon such sale to receive and give full and effectual receipts and discharges for the consideration monies received by my Attorney in respect thereof.

5. To pay all the testamentary expenses, debts of the Deceased, death duties and impositions due and payable in Singapore and all costs, charges and expenses incidental to the exercise of any of the powers herein contained.

6. Generally to act as my Attorney in Singapore in relation to the premises and all other matters in which I may be concerned or interested as aforesaid and on my behalf to execute all instruments, and do all acts and things fully and effectually as I could do.

7. To procure the registration of this Power of Attorney whenever registration thereof may be legally required necessary or convenient in the proper offices in Singapore and to procure to be done any and every other act and thing whatsoever may be in any way requisite and proper for authenticating and giving full effect to the same according to the laws and usages of the Republic of Singapore.

**AND I**, the said \_\_\_\_\_ agree at all times to ratify whatsoever my Attorney or their said Attorney shall lawfully do or cause to be done in the premises by virtue of this Deed.

**IN WITNESS WHEREOF** I have hereunto set my hand and seal the day and year first above written.

**SIGNED, SEALED AND DELIVERED** )

by the abovenamed \_\_\_\_\_ )

in the presence of :- )

)

BEFORE ME,



**A NOTARY PUBLIC**

On this \_\_\_\_\_ day of \_\_\_\_\_, before me \_\_\_\_\_, an  
Notary Public of the \_\_\_\_\_, practising in \_\_\_\_\_  
personally appeared \_\_\_\_\_, (German  
Passport No. \_\_\_\_\_) who of my personal knowledge I know to be the  
identical person whose name “\_\_\_\_\_” is subscribed to the within  
instrument and acknowledge that she has voluntarily executed this instrument in  
\_\_\_\_\_.

**WITNESS MY HAND** this \_\_\_\_\_ day of \_\_\_\_\_.

**A NOTARY PUBLIC**

## POWER OF ATTORNEY

A **POWER OF ATTORNEY** given on the \_\_\_\_\_ day of \_\_\_\_\_ by us,

(1) \_\_\_\_\_ (NRIC No. \_\_\_\_\_)

(2) \_\_\_\_\_ (NRIC No. \_\_\_\_\_)

of \_\_\_\_\_ (hereinafter referred to as “the Donors”).

### WHEREAS

The Donors are desirous of purchasing a HDB flat directly from HDB and/or from the open market known as \_\_\_\_\_ (hereinafter referred to as “the said flat”).

**NOW THIS DEED WITNESSETH** that the Donors hereby severally and jointly appoints \_\_\_\_\_ (NRIC No. \_\_\_\_\_) of \_\_\_\_\_ (hereinafter referred to as “the Attorney”) to act for the Donors to do and perform the following acts and deeds:

### Purchase of HDB flat

#### 1. Direct from HDB and/or the resale market

1.1 To select and purchase the said flat under any of HDB’s Eligibility Schemes or any other Schemes as the Attorney shall deem fit and to sign, seal and deliver all documents required under the said Scheme, the Option to Purchase, Sale and Purchase Agreement, the Agreement for Lease, Deed of Assignment, Lease-in-Escrow, Lease, Transfer, Letter of Authorisation, Option forms and any other documents required by HDB to complete the purchase of the said flat.

1.2 To comply with all the terms and conditions of the Eligibility Scheme or any other schemes under which the said flat is to be purchased and to sign all documents required under any such Schemes.

#### 2. Name(s) in which flat is to be purchased

To purchase the said flat in the name of the Donors for such consideration as the Attorney shall deem fit, and for such purpose to enter into any agreement on such terms and conditions as the Attorney deems fit.

### 3. **Manner of holding**

#### 3.1 **Specific power**

To purchase the said flat on behalf of the Donors as joint tenants and to sign all forms and documents which the HDB requires in connection with such option.

### 4. **Financing**

4.1 For the purpose of financing the purchase of the said flat to raise or borrow money from the HDB or any person, body corporation or entity (hereinafter referred to as “the financier”) upon the security of the said flat and upon such terms and conditions as the Attorney shall deem fit and to give a valid receipt for the same.

4.2 For the purpose of securing the repayment of money so raised or borrowed to mortgage the said flat upon such terms and conditions as the Attorney shall deem fit and for effecting such mortgage to sign, seal and deliver the Deed of Assignment, Mortgage, Mortgage-in-Escrow and/or any instrument or deed and to do any act or deed necessary and to make or concur in the alteration of any or all of the terms and conditions of the mortgage.

4.3 To accept service of Writs, Summonses, Notices and to defend all legal proceedings brought by such mortgagee or mortgagees in connection with such loan or loans.

### 5. **Utilisation of CPF monies**

5.1 To apply to the Central Provident Fund Board (hereinafter called “the CPF Board”) for the release of the Donor’s Central Provident Fund (“CPF”) monies standing to the Donor’s credit in the CPF for all or any of the following purposes:

5.1.1. for payment, either full or partial towards the purchase of the said flat, the payment of which is to be made to the HDB or such other person as the CPF Board thinks fit to receive such CPF monies;

5.1.2. for repayment or periodic payments to the financier towards the repayment of any loan taken by the Donor to finance or re-finance the purchase of the said flat;

5.1.3. for payment towards purchase of recess area, the payment of which is to be made to the HDB or such other person as the CPF Board think fit to receive such CPF monies;

5.1.4. for payment towards purchase of common area under the conversion of HUDC Leases to Strata Titles by the HDB, the payment of which is to

- be made to the HDB or the approved mortgagee or such other person as the Board thinks fit to receive such monies;
- 5.1.5. for repayment or periodic payments to the financier towards the repayment of any loan taken by the Donor to finance or re-finance the purchase of the common area under the conversion of HUDC Leases to Strata Titles by the HDB;
  - 5.1.6. for payment of Registration Deposit under the HDB Fiancé/Fiancée Scheme, the payment of which is to be made to the Housing & Development Board or such other person as the CPF Board thinks fit to receive such CPF monies;
  - 5.1.7. for payment of upgrading cost incurred under HDB's Upgrading Programme, the payment of which is to be made to the HDB or such other person as the CPF Board thinks fit to receive such CPF monies;
  - 5.1.8. for payment of any stamp duties, legal fees, cost and other charges in connection with the withdrawal of monies for all or any of the purposes listed in paragraphs 5.1.1 to 5.1.7 above;
- 5.2 To apply to the CPF Board to transfer the whole or part of the amount of the Donor's CPF monies standing to the Donor's credit in the Retirement Account to the Donor's Ordinary Account for all or any of the purposes listed in paragraphs 5.1.1 to 5.1.8 excluding 5.1.7.
  - 5.3 To obtain from the CPF Board the Donor's statement of account or any other statement of account(s) regarding the Donor's withdrawal(s) under the CPF Board's Housing Schemes.
  - 5.4 To accept and agree to the terms and conditions imposed or as may be imposed by the CPF Board for the withdrawal/release of the Donor's CPF monies under paragraph 5.1.
  - 5.5 To sign or execute all forms, documents, notices and deeds which the CPF Board may require or deem necessary for the release of the Donor's CPF monies and to comply with all the stipulations and conditions mentioned therein.
  - 5.6 To declare to the CPF Board the share of the Donor's interest in the said flat including the percentage of coverage under the Home Protection Insurance Scheme in respect of the Donor and to accept and agree to the terms and conditions imposed under the Home Protection Scheme and to sign all documents whatsoever which the CPF Board may require of the Donor under the Home Protection Insurance Scheme.
  - 5.7 To furnish to the CPF Board all such information, evidence and documents as the CPF Board may require for all or any of the purposes listed in paragraph 5.1.

6. **To view CPF account**

- 6.1 To obtain and view the Donor's CPF account information, to authorise the HDB to have access to and to view and obtain the Donor's CPF account information, and to sign any authorisation or other documents thereto.

7. **Collection of keys and documents**

- 7.1 To collect the keys and take possession of the said flat.
- 7.2 To collect the Agreement for Lease, Duplicate Lease, Deeds of Assignment and all other documents in connection with the said flat when the same are ready for collection.

8. **Insurance**

- 8.1 To insure the said flat against any type of risk and if so required by the mortgagee, to so insure with the mortgagee as co-insured, to assign any policy or policies to the HDB or the mortgagee if so required and to surrender any policy or policies and in connection with the aforesaid to sign, seal, execute and deliver all forms and documents relating thereto and may be required by the insurance company and to pay and receive all necessary insurance premia or refund and to obtain valid receipts therefor.

9. **Receipt of monies**

- 9.1 To receive any monies due to the Donor and to give a good receipt therefor, which receipt shall wholly exonerate the person paying such monies from seeing to the application thereof or being responsible for the loss or misapplication thereof.
- 9.2 To request for all cheques for any monies due to the Donor to be issued in the name of *the Donors*.

10. **Option**

- 10.1 To sign and agree to the terms in the option form and all other forms relating to payment of resale levy/premium under HDB's prevailing terms and conditions of resale.

11. **Contra facility**

To submit an application to the HDB for its approval of the contra facility, to agree and comply with all the terms and conditions of the said contra facility as

the Attorney deems fit and in connection therewith to sign any request, authorisation, indemnity or other forms and documents required by the HDB.

**12. General management**

- 12.1 To do all such acts and things as may be necessary or expedient in connection with the care, maintenance and/or management of the said flat as fully and effectively as the Donor could do and to comply with the terms of the Agreement for Lease, Lease and all rules and regulations that may be imposed upon the said flat by the HDB.
- 12.2 To pay all rates, taxes, fees, service and conservancy charges, loan instalments, penalties expenses and other outgoings payable by the Donor for or on account of the said flat or any part thereof.
- 12.3 To make, sign applications and apply for approval to the HDB or the appropriate government departments, local authority or other competent authority for all and any licences, permissions, planning approval and consents required by any Act of Parliament, Order, statutory instrument, regulation, by-law or otherwise in connection with the management repairs, renovations, subletting or tenancies, improvement of the said flat including the recovery of compensation where such is recoverable with power to give receipts and full discharges therefor.
- 12.4 To sign and seal and as the Donor's act and deed deliver any deed or instrument in writing and to do every other thing whatsoever which may be necessary or proper for carrying any agreement for the purchase into complete effect and execution in such manner that all the appurtenances may be effectually and absolutely conveyed, transferred and assured unto the Donor as herein directed.

**13. General clauses**

- 13.1 To accept service of any writs, summonses, notices or other processes or documents issued by the HDB and defend or deal with and to appear before any judge or other officer in connection with the said flat.
- 13.2 To accept any notices, attend at and take part in any poll and pay any improvement contributions and other charges and expenses incurred by the HDB including any premium, legal, stamp and survey fees and to do all such acts or deeds as may be necessary arising from or in any manner connected to any upgrading works carried out by the HDB on the said flat or in the precinct pursuant to the provisions of the Housing & Development Act or any amendments thereto.

I hereby agree to ratify and confirm whatsoever the Attorney shall lawfully do or cause to be done by virtue of this Deed including anything which shall be done between the revocation of this Deed by my death or in any other manner and notice of such

revocation reaching the Attorney and I declare that as against me and persons claiming under me everything which the Attorney shall lawfully do or cause to be done in pursuance of this Deed after such revocation as aforesaid shall be valid and effectual in favour of any person claiming the benefit thereof and acting in good faith who before the doing thereof shall not have had express written notice of such revocation.

This Power of Attorney shall be valid for a period of SIX (6) year(s) from the date abovementioned unless sooner revoked on express written notice being given to the HDB and the Attorney.

IN WITNESS WHEREOF I have hereunto set my hand(s) and seal(s) the day and year first abovementioned.

**SIGNED, SEALED AND DELIVERED** )  
by the abovenamed \_\_\_\_\_ )  
in the presence of :- )

On this \_\_\_\_\_ day of \_\_\_\_\_ before me,  
\_\_\_\_\_ a Notary Public/Singapore Consulate Officer  
practising/officiating at \_\_\_\_\_ personally appeared \_\_\_\_\_  
who of my own personal knowledge I know to be the identical person(s) whose  
name(s) “\_\_\_\_\_” is subscribed to the within written instrument and  
acknowledged that he had voluntarily executed this instrument in \_\_\_\_\_.

WITNESS my hand:

IN WITNESS WHEREOF I have hereunto set my hand(s) and seal(s) the day and year first abovementioned.

**SIGNED, SEALED AND DELIVERED** )  
by the abovenamed \_\_\_\_\_ )  
in the presence of :- )

On this \_\_\_\_\_ day of \_\_\_\_\_, before me, \_\_\_\_\_ an Advocate and Solicitor of the Supreme Court of the Republic of Singapore practising in Singapore personally appeared \_\_\_\_\_ who of my own personal knowledge I know to be the identical person(s) whose name(s) “\_\_\_\_\_” is subscribed to the within written instrument and acknowledged that she had voluntarily executed this instrument in Singapore.

WITNESS my hand:



## POWER OF ATTORNEY (GENERAL)

### DETAILS

**Interpretation** — References to *Clauses*, *Schedules* and *Items* are references to clauses of, schedules to and paragraphs of schedules to this deed

---

**Parties** (1) \_\_\_\_\_

(2) \_\_\_\_\_ of Passport/NRIC No. \_\_\_\_\_

(“Officer”)

---

**Recitals**

**A** The Bank is desirous of authorising certain officers of the Bank to act for the Bank for the purposes hereinafter mentioned and for such purposes to execute in the Bank’s name and on the Bank’s behalf deeds, instruments and documents.

**B** The Officer is an officer of the Bank.

**C** The Bank wishes to appoint the Officer and the Officer wishes to accept the appointment as the true and lawful attorney and agent of the Bank to act within the geographical limits and upon the terms and conditions set out in this deed.

---

**Date of deed** \_\_\_\_\_

## **POWER OF ATTORNEY (GENERAL)**

### **GENERAL TERMS**

---

#### **1 Appointment**

The Bank appoints the Officer as the attorney of the Bank, and the Officer accepts that appointment, subject to the terms of this deed.

---

#### **2 Duration of appointment**

The appointment of the Officer under this deed is for the period specified in Item A of the Schedule.

---

#### **3 Conditions of appointment**

The Officer has all of the rights and powers referred to in Item B of the Schedule, and may act for and on behalf of and in the name of the Bank and do and perform all or any of the acts referred to in Item B of the Schedule subject to the restriction in Clause 4 below and any terms and conditions or limitations imposed in Item B of the Schedule.

---

#### **4 No power to delegate or appoint attorneys**

The Officer is not permitted to:

- (a) appoint any substitute, delegate or sub-attorney in respect of any of the rights or powers granted pursuant to this deed; or
  - (b) appoint any additional attorney on behalf of the Bank
- 

#### **5 Bank to be bound**

The Bank:

- (a) declares that all acts done by the Officer in exercising powers under this deed will be as good and valid as if they had been done by the Bank itself; and
  - (b) undertakes from time to time and at all times to ratify and confirm all acts, deeds, documents, matters or things which are lawfully done or executed or caused to be done or executed by virtue of this deed.
-

---

**6      Governing law**

This deed shall be governed by the laws of Singapore. Each party submits to the non-exclusive jurisdiction of the courts in Singapore.

## **POWER OF ATTORNEY (GENERAL)**

### **SCHEDULE**

#### **A Duration of appointment**

The authority conferred on the Officer shall remain in full force and effect for a period of twenty-four (24) months from the date hereof.

#### **B Authority**

Unless expressly stipulated otherwise, the Officer acting as the attorney of the Bank can do or execute all or any of the following acts, deeds, documents, matters or things in Singapore only

1. To open and close accounts in the name of the Bank with other banks and to draw and sign cheques in respect of moneys standing to the credit of the Bank with any other bank and to draw and sign bills, promissory notes, circular notes, letters of credit and to endorse deposit receipts PROVIDED that every such cheque, bill, promissory note, circular note, letter of credit and endorsement of deposit receipt shall be countersigned by some other officer for the time being of the Bank duly authorised by power of attorney or otherwise to countersign the same.
2. To open or close any accounts in the name of the Bank's clients.
3. To execute and sign seal and deliver any agreement, consent, declaration, deed, instrument, document or paper, to which the Bank is or is to be a party, relating to or connected with.
  - (a) any loan, credit, banking, guarantee or other facilities (whether syndicated or otherwise) granted or to be granted by the Bank or to which the Bank is or is to be a participant or sub-participant or where the Bank is or is to be an arranger, manager, trustee or agent in any capacity; or
  - (b) any issue or offer of notes, bonds, debentures or other securities subscribed, purchased, underwritten, arranged or managed or to be subscribed, purchased, underwritten, arranged or managed by the Bank or where the Bank is or is to be acting as a trustee or agent in any capacity,

and to execute and sign, seal and deliver (i) any ancillary, collateral or supplementary document, deed, instrument, paper or agreement relating to or in connection with any of the facilities or transactions referred to in sub-paragraph (a) or (b) above (including, without limitation, any document, deed, instrument, paper, declaration, consent or agreement creating or relating

to any security or collateral given or to be given to the Bank (whether in its capacity as trustee, agent or otherwise) for or in connection with any of the facilities or transactions referred to in sub-paragraph (a) or (b) above) and (ii) any other documents, deeds, instruments, papers, declarations, consents or agreements relating to or in connection with any of the facilities or transactions referred to in sub-paragraph (a) or (b) above.

4. To countersign cheques, bills, promissory notes, circular notes, letters of credit, and endorsements of deposit receipts signed by any other officer of the Bank duly authorised in that behalf and which require countersigning.
5. To execute bonds, guarantees and indemnities for and in the name of the Bank in favour of any Government or semi-Governmental or local or statutory Authority or any Minister or Officer of any such Government or Authority for the purposes of guaranteeing or indemnifying the payment by the Bank's customers of freight charges, customs dues, charges or other outgoings or liabilities in respect of the supply of electricity, gas, water, telecommunication or other public utilities and the costs of all installations in connection therewith and any other charges or liabilities.
6. To take, accept and hold as security or otherwise and to sell, negotiate, transfer and realise bills of lading, dock warrants, delivery orders, policies of insurance, title deeds, mortgages, charges, letters of lien or hypothecation, bills of sale, certificates of stocks and shares, debentures and all kinds of mercantile instruments, transfers, conveyances or assignments of or charges on property, documents of title, securities and symbols of possession of or title to property of any kind and to take and accept mortgages, charges or pledges of or on any property whatsoever and to reconvey, reassign, discharge or release or consent to the releasing of any property mortgaged, charged or pledged to the Bank and to execute, sign, seal and deliver and perfect all deeds, instruments and writings as may be required by the laws for the time being in force and to make effective all mortgages, charges, caveats, reconveyances, reassignments, discharges, transfers, leases, conveyances or assignments in which the Bank concurs as mortgagee or chargee and all and any other instruments whereby immovable properties are mortgaged, charged, vested in, transferred to or reconveyed, reassigned, released or discharged by the Bank and to exercise all rights and powers belonging to the Bank as mortgagee or chargee of any immovable property mortgaged or charged to the Bank.
7. To accept conveyances, transfers, assignments, leases and other dispositions of property in favour of the Bank whether beneficially or as trustee or otherwise, to execute such instruments when necessary or expedient for the same to be executed on the part of the Bank and to execute all documents ancillary or related thereto.
8. To make or execute any application, affidavit, declaration, statement or paper to be filed or lodged with any officer, authority, court or tribunal or any Government or Governmental or Statutory Body or Authority.

9. To exercise all rights and powers belonging to the Bank as mortgagee or chargee of any immovable property mortgaged or charged (legally or equitably) to the Bank and in particular (but without prejudice to the generality of the foregoing) to exercise any power of sale or other powers vested in the Bank as mortgagee, to enter into possession of and receive the rent of any such immovable property and/or to appoint a receiver so to do so, to consent to the leasing of any such property, to transfer any mortgage debt or security and to give notices and do all other acts which are necessary or proper to effect, complete or perfect such transfer and to reconvey, reassign or release any such property and to execute deeds of arrangement and deeds or instruments of postponement or priorities.
10.
  - (a) To give, execute, sign, seal and deliver and if necessary register any notice, memorandum of lien or charge, and caveats and to extend, renew or withdraw any such notice, caveat, memorandum of lien or charge and for that purpose to execute any withdrawal of caveat, memorandum of discharge of lien or charge and if necessary to register the same at any Government Department, local or statutory authority.
  - (b) To agree and consent to the variation of the terms and conditions of any mortgages or charges executed and registered in favour of the Bank and for that purpose to sign and execute all necessary documents for carrying into effect such variation.
  - (c) To consent to the registration of any easement against any property mortgaged or charged under any mortgage or charge executed and registered in favour of the Bank.
11. To commence and prosecute or appear and defend all suits, actions and proceedings (including arbitration and distress proceedings) arising out of any transactions, acts and things or in which the Bank shall be in any way interested or concerned and to consent or submit to or appeal against any judgment or order in or settle or compromise any such suit, action or proceeding.
12. To institute and take all steps in any proceedings taken or hereafter to be taken by or against any person firm or company under any Act or Ordinance for the time being in force for the relief or otherwise of insolvent debtors or the winding-up of companies or judicial management or administration order and generally to act for the Bank in all proceedings whether by way of bankruptcy or liquidation or by arrangement or by composition or judicial management or administration order which may be taken against or for the relief of any debtor of the Bank.
13. To make or authorise any other member of the Bank's staff to make any declaration or affidavit in any matter or proceedings legal or otherwise in which the Bank may be a party or in which the Bank may be interested in any manner whatsoever.

14. To attend, take part in and vote at any meeting of any company which the Bank has a right to attend and in the name of the Bank to execute such form of proxy as may be in any particular case necessary to enable a proxy to attend, take part in or vote at such meeting, and to appoint himself or any other person as such proxy.
15. To execute, sign, seal and deliver and perfect all deeds instruments and documents of whatsoever nature necessary or expedient for effecting all or any of the purposes aforesaid.
16. To register or file or cause to be registered or filed in any official registry or any court or with any body politic or corporate, company, corporation, firm or person this power of attorney and all deeds, notices, memorials, contracts, instruments or documents which it may be necessary or expedient to register or file and generally on behalf of the Bank to comply with the requirements of the law for the time being relating to companies or corporations and particularly banking companies and to represent the Bank in all legal matters and to accept service of process or any notice required to be served on the Bank.
17. Generally to do or cause to be done all such acts and things not herein specifically authorised as the Officer may deem proper or expedient for or in relation to all or any of the purposes aforesaid.

**EXECUTED AS A DEED:**

The Common Seal of

---

---

was hereunto affixed in the presence of:-

---

Director

---

Director

I, \_\_\_\_\_, an Advocate and Solicitor of the Supreme Court of the Republic of Singapore practising in the Republic of Singapore hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, the common seal of \_\_\_\_\_ was affixed to the within written instrument at Singapore in the presence of \_\_\_\_\_ and \_\_\_\_\_.

Witness my hand this \_\_\_\_\_ day of \_\_\_\_\_.



**ANNEX C:**

**COMPARATIVE STUDY OF  
POWERS OF ATTORNEY ACTS IN  
THE UK, NEW SOUTH WALES, TASMANIA,  
BRITISH COLUMBIA, HONG KONG  
AND MALAYSIA, AND  
RELEVANT STATUTORY PROVISIONS IN  
SINGAPORE**

**COMPARATIVE STUDY OF POWERS OF ATTORNEY LEGISLATION**

<b>UK</b>	<b>New South Wales</b>	<b>Tasmania</b>	<b>British Columbia</b>	<b>Hong Kong</b>	<b>Malaysia</b>	<b>Singapore</b>
<b>Legislation</b>						
Powers of Attorney Act 1971	Powers of Attorney Act 2003	Powers of Attorney Act 2000	Power of Attorney Act	Powers of Attorney Ordinance	Powers of Attorney Act 1949	No stand-alone Powers of Attorney Act. Statutory provisions relating to powers of attorney in: <ul style="list-style-type: none"> <li>• Conveyancing and Law of Property Act (Cap 61) (“CLPA”) ss 8, 44–48</li> <li>• Evidence Act (Cap 97) (“EA”) s 87</li> <li>• Land Titles Act (Cap 157) (“LTA”) ss 146–150</li> <li>• Registration of Deeds Act (Cap 269) (“RODA”) s 10</li> <li>• Trustees Act (Cap 337) (“TA”) s 27 and Third Schedule</li> <li>• Rules of Court Order 60</li> </ul>
<b>Date of operation</b>						
1 October 1971	16 February 2004	4 April 2001	1996	1 October 1972	1 January 1950	—

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
<b>Long title</b> An Act to make new provision in relation to powers of attorney and the delegation by trustees of their trusts, powers and discretions.	An Act to consolidate and revise the legislation relating to powers of attorney; to make consequential amendments to the Conveyancing Act 1919 and certain other legislation; and for other purposes.	An Act to provide for the registration of powers of attorney.	—	To make new provision in relation to powers of attorney and for matters connected therewith.	An Act relating to powers of attorney.	—
<b>Ambit of Act</b> Covers general powers of attorney only. Does not cover lasting/enduring powers of attorney.	Covers general powers of attorney and enduring powers of attorney in separate provisions.	Covers general powers of attorney and enduring powers of attorney in separate provisions.	Covers general powers of attorney and enduring powers of attorney in separate provisions.	Covers general powers of attorney only. Does not cover enduring powers of attorney.	Covers general powers of attorney only. Does not cover enduring powers of attorney.	CLPA ss 8, 44–48 cover powers of attorney relating to conveyances of property. <sup>1</sup> EA s 87 covers all types of powers of attorney. LTA ss 146–150 cover powers of attorney relating to transactions with registered land. RODA s 10 relates to a situation where an assurance or a caveat is executed by an agent or representative duly authorised by a power of attorney. TA s 27 and Third Schedule cover trustee powers of attorney. Rules of Court Order 60 covers powers of attorney deposited under CLPA s 48.

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
<p><i>(As amended by Law of Property (Miscellaneous Provisions) Act 1989 (c 34), Sched 1 para 6)</i></p> <p><b>Execution of powers of attorney</b></p> <p>1.—(1) An instrument creating a power of attorney shall be executed as a deed by the donor of the power.</p> <p>(2) Repealed by Law of Property (Miscellaneous Provisions) Act 1989.</p> <p>(3) This section is without prejudice to any requirement in, or having effect under, any other Act 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.</p>	<p>No provision.</p> <p><b>Form of power of attorney</b></p> <p>18.—(1) A power of attorney may be made—</p> <p>(a) by deed; or</p> <p>(b) in accordance with form 1, conferring particular powers specified in it; or</p> <p>(c) in accordance with form 2, conferring power on the attorney<sup>2</sup> to do all things that the donor<sup>3</sup> may lawfully authorise an attorney to do.</p> <p>(2) An enduring power of attorney may be made under Part 4.</p> <p><b>Power to have effect as deed</b></p> <p>49. A power of attorney made in accordance with form 1, 2, 3 or 4<sup>4</sup> is as valid and effectual to all intents and purposes as if made by deed duly executed and acknowledged.</p>	<p>No provision.</p>	<p><b>Execution of powers of attorney</b></p> <p>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.</p> <p>(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.</p> <p>(3) This section is without prejudice to any requirement in, or having effect under, any other Ordinance as to the witnessing of instruments creating powers of attorney and does not affect the rules relating to the execution of instruments by corporations.</p>	<p><i>(As amended by Interpretation (Amendment) Act 1997)</i></p> <p><b>Authentication of powers of attorney</b></p> <p>3.—(1) No instrument purporting to create a power of attorney executed after the commencement of this Act shall have any validity to create such power within Peninsular Malaysia unless—</p> <p>(a) if executed within Peninsular Malaysia, the instrument is executed before, and is authenticated in the appropriate form set out in the First Schedule hereto by—</p> <p>(i) a Magistrate;</p> <p>(ii) a Justice of the Peace;</p> <p>(iii) a Land Administrator<sup>7</sup>;</p> <p>(iv) a Notary Public;</p> <p>(v) a Commissioner for Oaths;</p>	<p>No provision.</p>	

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
		<p><b>Execution of power of attorney by direction of donor</b></p> <p>50.—(1) Where an instrument creating a power of attorney is not executed personally by the donor, the instrument is taken to be validly executed if—</p> <p>(a) it is executed by some other person in the presence of, and by the direction of, the donor; and</p> <p>(b) the signature of that other person is made or acknowledged by the donor in the presence of 2 or more witnesses present at the same time; and</p> <p>(c) those witnesses attest and subscribe the power of attorney in the presence of the donor—</p> <p>but no form of attestation is necessary for that purpose.</p> <p>(2) Subsection (1) does not apply to an enduring</p>			<p>(vi) an advocate and solicitor; or</p> <p>(vii) an officer, acting in the course of his employment, of a company carrying on the business of banking in Peninsular Malaysia and incorporated by or under any written law in force in Peninsular Malaysia; or</p> <p>(b) if executed outside Peninsular Malaysia, the execution of such instrument is authenticated, in such form as may be accepted by the Registrar,<sup>8</sup> by—</p> <p>(i) a Notary Public;</p> <p>(ii) a Commissioner for Oaths;</p> <p>(iii) any Judge;</p> <p>(iv) a Magistrate;</p> <p>(v) a British Consul or Vice-Consul;</p>	

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
		<p>power of attorney unless the Board,<sup>5</sup> after a hearing in accordance with Division 1 of Part 10 of the Guardianship and Administration Act 1995, declares by order that that subsection is to apply.</p> <p><b>Formal requirements</b></p> <p>9.—(1) A power of attorney or other instrument under this Act –</p> <p>(a) is to have all writing, printing, signatures, seals and plans clear and legible to the satisfaction of the Recorder and is to be capable of being stored and reproduced on the media or devices used under section 4 for storing and reproducing copies of the register,<sup>6</sup> and</p> <p>(b) subject to subsection (2), is to contain any matter that is intended to be in addition to, or to be inserted in and form part of, a power of attorney</p>			<p>(vi) a representative of Her Britannic Majesty;</p> <p>(vii) on and after Merdeka Day, any Consular Officer of Malaysia;</p> <p>(viii) in the case of an instrument executed in the Kingdom of Saudi Arabia, the Malaysian Pilgrimage Commissioner; or</p> <p>(ix) in the case of an instrument executed in the Republic of Singapore, an advocate and solicitor of the Supreme Court of the Republic; or an officer, acting in the course of his employment, of a company carrying on the business of banking in the Republic and incorporated by or under any written law of the Republic.</p>	

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
		<p>or other instrument in a page of that power of attorney or other instrument or in the form of an annexure; and</p> <p>(c) must be accompanied by the prescribed fee.</p> <p>(2) An annexure to a power of attorney or other instrument –</p> <p>(a) is to be in the same size and form as the power of attorney or instrument; and</p> <p>(b) is to be referred to in the power of attorney or instrument; and</p> <p>(c) is to contain identification that it is the annexure to the power of attorney or instrument; and</p> <p>(d) is, subject to subsection (3), to be signed by the parties to the power of attorney or instrument or, where the party is a body corporate, by the persons who have attested the affixing of the seal of that body corporate to the power of attorney or</p>			<p>(2) Notwithstanding anything to the contrary contained in any written law in force at the commencement of this Act, an instrument purporting to create a power of attorney duly executed and authenticated in accordance with this section shall be deemed to be properly and validly executed and attested for all or any of the purposes for which a power of attorney may be used under any such written law.</p> <p>First Schedule</p> <p>[Section 3]</p> <p>FORM I</p> <p>FORM OF AUTHENTICATION IN CASE OF A POWER OF ATTORNEY EXECUTED BY AN INDIVIDUAL</p> <p>I ..... (Magistrate, Justice of the Peace, Land Administrator, Notary Public, Commissioner for Oaths, Bank Official or Advocate and Solicitor of the High Court in Malaya) officiating [or</p>	

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
		<p>instrument; and</p> <p>(e) is to be pinned or stapled to the body of the power of attorney or instrument.</p> <p>(3) If one of the parties to a power of attorney or other instrument is a body corporate that is not required by law to affix its seal to the power of attorney or instrument, an annexure to the power of attorney or instrument is to be signed by any person who is authorised by law to execute the power of attorney or instrument.</p> <p>(4) An alteration in a power of attorney, other instrument or annexure is to be made by striking through the word or words intended to be altered so as not to render illegible the original word or words.</p> <p>(5) A power of attorney or other instrument is taken to be lodged with the Recorder when a record is made in a medium or device for storing or processing information approved under section 4.</p>			<p>practising] at .....;</p> <p>hereby certify that the <u>signature</u> thumb-mark of the donor above named was <u>written</u> affixed in my presence on this ..... day of ..... 20 .....</p> <p>and is, to my own personal knowledge, [or according to information given to me by trustworthy and respectable persons, namely ..... of ..... and ..... of ..... information verily believe,] the true <u>signature</u> thumb-mark of ..... who has acknowledged to me that he <u>is</u> is not of full age and that he has voluntarily executed this instrument.</p> <p>Witness my hand .....</p> <p>FORM II</p> <p>FORM OF AUTHENTICATION IN CASE OF A POWER OF ATTORNEY EXECUTED BY A</p>	



UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
		<p><b>Requirements for other instruments</b></p> <p>10.—(1) For the purposes of this Act, an instrument that refers to a power of attorney is taken as not being in registrable form unless –</p> <p>(a) it is made by the donor of the power of attorney or by his or her personal representative; and</p> <p>(b) it is witnessed in the same manner as that power of attorney; and</p> <p>(c) it clearly identifies the power of attorney by reference to –</p> <p>(i) the name of the donor; and</p> <p>(ii) the name of the attorney; and</p> <p>(iii) the date on which it was executed; and</p> <p>(iv) the distinctive number or other means of identification given under section 12(2).</p>			<p><b>COMPANY OR CORPORATION</b></p> <p>I ..... (Magistrate, Justice of the Peace, Land Administrator, Notary Public, Commissioner for Oaths, Bank Official or Advocate and Solicitor of the High Court in Malaya) officiating [or practising] at ....., hereby certify that on this ..... day of ..... 20 ....., the common seal of (<i>state name of company or corporation</i>) was duly affixed to the above written instrument in my presence in accordance with the regulations of the said <u>Company</u> Corporation.</p> <p>Witness my hand .....</p>	

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
<p><b>Abolition of deposit or filing of instruments creating powers of attorney</b></p> <p>2.—(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 at the central office of the Supreme Court or at the Land Registry under section 25 of the Trustee Act 1925, section 125 of the Law of Property Act 1925 or section 219 of the Supreme Court of</p>	<p><b>Part 6 Powers of attorney generally</b></p> <p><b>Division 3 Registration of powers of attorney</b></p> <p><b>Powers of attorney may be registered</b></p> <p>51.—(1) Any instrument executed before or after the commencement of this Act that creates a power of attorney may be registered by the Registrar-General in the General Register of Deeds kept under the</p>	<p>(2) It is sufficient compliance with subsection (1)(a) if the instrument is signed by the donor's personal representative with a statement as to how and in what capacity he or she has been appointed to act.</p> <p>(3) Nothing in this section is taken to require an instrument to be witnessed by any person who witnessed the power of attorney to which it refers.</p>	<p>No provision.</p>	<p>No provision.</p>	<p><i>(As amended by Interpretation (Amendment) Act 1997)</i></p> <p><b>Deposit of power of attorney</b></p> <p>4.—(1) Except as hereinafter provided no instrument purporting to create a power of attorney shall, after the commencement of this Act, have any validity to create such power within Peninsular Malaysia until –</p> <p>(a) a true copy of the said instrument duly compared therewith and marked by the</p>	<p><i>Conveyancing and Law of Property Act</i></p> <p><b>Right of purchaser as to execution</b></p> <p>8.—(1) On a sale, the purchaser shall be entitled either to require that the conveyance to him be executed in his own presence, or in that of his solicitor, or to have at his own cost the execution of the conveyance attested by some person appointed by him.</p> <p>(2) On a sale under a contract providing for the execution of the</p>
<p><b>Filing of instruments creating powers of attorney</b></p>						
<p><b>Abolition of deposit or filing of instruments creating powers of attorney</b></p> <p>2.—(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 at the central office of the Supreme Court or at the Land Registry under section 25 of the Trustee Act 1925, section 125 of the Law of Property Act 1925 or section 219 of the Supreme Court of</p>	<p><b>Part 6 Powers of attorney generally</b></p> <p><b>Division 3 Registration of powers of attorney</b></p> <p><b>Powers of attorney may be registered</b></p> <p>51.—(1) Any instrument executed before or after the commencement of this Act that creates a power of attorney may be registered by the Registrar-General in the General Register of Deeds kept under the</p>	<p><b>Scope of powers of attorney</b></p> <p>15. A document creating a power of attorney for any purpose or varying, revoking or otherwise relating to a power of attorney may be registered, notwithstanding that it was executed before the commencement of this section.</p> <p><b>Acts under power invalid until power registered</b></p> <p>16. An act, deed or instrument done,</p>	<p>No provision.</p>	<p>No provision.</p>	<p><i>(As amended by Interpretation (Amendment) Act 1997)</i></p> <p><b>Deposit of power of attorney</b></p> <p>4.—(1) Except as hereinafter provided no instrument purporting to create a power of attorney shall, after the commencement of this Act, have any validity to create such power within Peninsular Malaysia until –</p> <p>(a) a true copy of the said instrument duly compared therewith and marked by the</p>	<p><i>Conveyancing and Law of Property Act</i></p> <p><b>Right of purchaser as to execution</b></p> <p>8.—(1) On a sale, the purchaser shall be entitled either to require that the conveyance to him be executed in his own presence, or in that of his solicitor, or to have at his own cost the execution of the conveyance attested by some person appointed by him.</p> <p>(2) On a sale under a contract providing for the execution of the</p>

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
<p>Judicature (Consolidation) Act 1925.</p> <p>(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 deposited or filed as aforesaid before the commencement of this Act.</p> <p><i>(Section 2 has been repealed by the Supreme Court Act 1981, s 152(4), Sched 7)</i></p>	<p>Conveyancing Act 1919.</p> <p>(2) An instrument revoking a registered power of attorney may also be registered by the Registrar-General in that Register.</p> <p><b>Powers of attorney to be registered for dealings affecting land</b></p> <p>52.—(1) A conveyance<sup>9</sup> or other deed<sup>10</sup> affecting land executed on or after 1 July 1920 under a power of attorney has no effect unless the instrument creating the power has been registered.</p> <p><i>Note.</i> 1 July 1920 is the day on which the Conveyancing Act 1919 commenced.</p> <p>(2) If the instrument is registered after the time when the conveyance or other deed was executed, the conveyance or other deed has effect as if the instrument had been registered before that time.</p> <p>(3) In this section, deed includes any memorandum, dealing or other instrument.</p>	<p>executed or signed under a power of attorney by the attorney has no legal effect unless —</p> <p>(a) the power of attorney has been registered under this Act before the act, deed or instrument is done, executed or signed; or</p> <p>(b) in the case of an enduring power of attorney that is subject to an order of the Board made under section 33, a copy of the order is so registered.</p> <p><b>Death, &amp;c., of donor of power may be registered</b></p> <p>17.—(1) Where a power of attorney has been registered under this Act, notice of the death, bankruptcy or insolvency of the donor or of revocation of the power of attorney by the donor is to be registered as provided by subsection (2).</p> <p>(2) For the purposes of subsection (1), there is to be registered —</p> <p>(a) a declaration made</p>			<p>Senior Assistant Registrar<sup>14</sup> with the words “true copy”; or</p> <p>(b) where the original instrument is deposited in the registry of the Supreme Court in Singapore, an office copy of such instrument, has been deposited in the office of a Senior Assistant Registrar.</p> <p><b>Translation</b></p> <p>(2) If the instrument whereof a true copy or an office copy is so deposited is in any language other than the national language or English there shall also at the same time be deposited a translation into the national language or English thereof certified by an interpreter attached to the Court qualified to interpret in the language in which the instrument is written, or, if there be no such interpreter, a translation into the national language or English verified by a statutory declaration of</p>	<p>conveyance by an attorney under a power of attorney, the purchaser shall be entitled to require the power of attorney to be deposited by and at the expense of the vendor in the manner provided by section 48.</p> <p>(3) On the execution of a reconveyance or transfer or discharge of a mortgage by an attorney under a power of attorney, the mortgagor shall also be entitled to require the power of attorney to be deposited by and at the expense of the mortgagor in the manner provided by section 48.</p> <p><b>Deposit of power of attorney</b></p> <p>48.—(1)</p> <p>(a) An instrument creating a power of attorney, its execution being verified by affidavit, statutory declaration, notarial certificate or other sufficient evidence, or a true copy of the instrument duly compared therewith and marked by the</p>

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
	<p>affecting land that is deemed by an Act to have effect as a deed.</p> <p>(4) This section does not apply to a lease for a term of 3 years or less.</p>	<p>by a person of the fact of the death, bankruptcy or insolvency of the donor of a power of attorney made before a person having authority to administer an oath in the place, whether in Tasmania or elsewhere, where the declaration is made; or</p> <p>(b) an instrument of revocation of a power of attorney; or</p> <p>(c) a notice of revocation under the hand of the donor of a power of attorney; or</p> <p>(d) in the case of an enduring power of attorney that is revoked, or of which the terms are varied, by an order of the Board under section 33, a copy of that order.</p> <p>The following are provisions relating to register and registration:</p>			<p>some person qualified to translate from the language in which the instrument is written into the national language or English to the effect that such translation is to the best of his knowledge and belief a true translation.</p> <p><b>Fees</b></p> <p>(3) There shall be payable in respect of the deposit of documents under this section such fees as may from time to time be prescribed.</p> <p><b>Exception</b></p> <p>(4) Subsection (1) shall not apply to instruments executed and used for the sole purpose of carrying out transactions in the office of a Registrar of Titles or a Land Administrator or a Chief Inspector or Senior Inspector of Mines, provided they are attested in accordance with any law for the time being in force regarding the attestation of such instruments.</p>	<p>Registrar, Deputy Registrar or Assistant Registrar of the Supreme Court with the words 'true copy', or, if the instrument is registered in Malaysia, an office copy thereof, may be deposited in the Registry of the Supreme Court.</p> <p>(b) For the purposes of this section, a photographic reproduction of any such instrument made in such manner and of such dimensions as may be prescribed by general rule shall be deemed to be a true copy of the instrument.</p> <p>(c) The affidavit or declaration, if any, verifying the execution of any instrument creating a power of attorney, or, where an office or true copy of such an instrument is deposited, an office or true copy of that affidavit or declaration, shall be deposited with the</p>

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
		<p><b>Register of powers of attorney</b></p> <p>4.—(1) The Recorder must keep a register of all powers of attorney.</p> <p>(2) The register consists of all powers of attorney, instruments varying or revoking a power of attorney and other instruments relating to powers of attorney that are lodged with the Recorder under this or any other Act.</p> <p>(3) The register may be kept wholly or partly –</p> <p>(a) on paper, microfilm, magnetic tape, magnetic disk, optical disk or any combination of those media or in or on such other medium as may be approved by the Recorder; or</p> <p>(b) in such device for storing or processing information as may be approved by the Recorder –</p> <p>and the Recorder may at any time rearrange the register or change any such medium or device accordingly.</p>			<p><b>Register of powers of attorney and inspection of register</b></p> <p>9. A separate file of documents deposited in accordance with section 4 shall be kept by every Senior Assistant Registrar, who shall enter in a register kept for that purpose short particulars of each such document together with any subsequent revocation or other determination thereof of which he shall have had notice, and any person may, during the usual office hours, upon payment of the prescribed fee, search such register and file and inspect any document so deposited, and an office copy of such document shall be delivered out to him on request and on payment of the prescribed fee.</p> <p><b>Searches</b></p> <p>12. The Registrar and every Senior Assistant Registrar shall, upon application whether made orally or in writing by any person desirous of obtaining information</p>	<p>instrument or copy of the instrument, and paragraphs (a) and (b) shall apply, <i>mutatis mutandis</i>, to such office or true copy.</p> <p>(2) In the case of any instrument creating a power of attorney in a foreign language being so deposited, there shall be deposited therewith a translation thereof, certified by a sworn interpreter of the court, or if there is no interpreter attached to the court sworn to interpret in the language in which the instrument is written, the translation shall be verified by a statutory declaration of some person qualified to translate it.</p> <p>(3) A separate file of instruments so deposited shall be kept, and any person may search that file and inspect every instrument so deposited, and an office copy thereof, and if in a foreign language, of the translation thereof, shall be delivered out to him on request.</p> <p>(4) A copy of an instrument so deposited</p>

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
		<p>(4) The Recorder may include in the register any power of attorney that, immediately before the commencement of this Act, is registered under the Registration of Deeds Act 1935.</p> <p><b>Searches of public records</b></p> <p>5.—(1) The following records are public records:</p> <ul style="list-style-type: none"> <li>(a) the register;</li> <li>(b) powers of attorney and other instruments lodged under this Act for registration;</li> <li>(c) any index of unregistered dealings kept in the office of the Recorder;</li> <li>(d) a copy of an order referred to in section 33(2).</li> </ul> <p>(2) Any information in a public record is available as may be approved by the Recorder and on payment of such fee, if any, as may be prescribed.</p>			<p>respecting any specified document deposited in the office of the Registrar or Senior Assistant Registrar or as to the deposit or otherwise of a document of any specified tenor and on payment of the prescribed fee, furnish, to the best of his ability, to such person the information applied for:</p> <p>Provided always that any copy of a document supplied for the purpose of furnishing such information shall be paid for separately under section 9.</p> <p><b>Particulars to be forwarded for record in Kuala Lumpur</b></p> <p>13.—(1) Every Senior Assistant Registrar shall, forthwith after making any entry in his register under section 9, transmit to the High Court Registry at Kuala Lumpur a verified copy of such entry.</p> <p>(2) The Registrar shall keep at Kuala Lumpur a register of all particulars transmitted to him under subsection (1), and any person may, during the</p>	<p>may be presented at the Registry, and may be stamped or marked as an office copy, and when so stamped or marked shall become and be an office copy.</p> <p>(5) An office copy of an instrument so deposited shall without further proof be sufficient evidence of the contents of the instrument and of the deposit thereof in the Registry.</p> <p>(6) If the instrument so deposited is in a foreign language, an office copy of the translation deposited with the instrument shall without further proof be admissible in evidence as a correct translation of the original document.</p> <p>(7) The fees to be taken in the Registry shall be fixed by the Chief Justice.</p> <p>(8) If any such instrument so deposited at any time thereafter has been or is revoked, the Registrar of the Supreme Court, on being satisfied by affidavit or statutory declaration or otherwise that the instrument has been revoked, shall</p>

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
		<p><b>Copies of register</b></p> <p>6.—(1) The Recorder must, on application and payment of the prescribed fee, furnish a person with a certified copy of any part of the register.</p> <p>(2) A copy for the purposes of this section may be –</p> <p>(a) in writing; or</p> <p>(b) made by such photocopying, facsimile or electronic transmission process as the Recorder determines; or</p> <p>(c) made partly in accordance with paragraph (a) and partly in accordance with paragraph (b).</p> <p><b>Power to sell, destroy or otherwise dispose of certain documents</b></p> <p>8.—(1) The Recorder may, with the written permission of the State Archivist given in accordance with section 20(2)(b) of the Archives Act 1983, sell,</p>			<p>usual office hours and upon payment of the prescribed fee, search such register and take a copy of any particulars recorded therein.</p>	<p>endorse thereon a certificate stating that it has been revoked and the date thereof, and thereupon the instrument shall be deemed to have been duly revoked as from the date of that certificate.</p> <p>(9) Nothing in this section shall be deemed to affect or invalidate a revocation of any such instrument where no certificate is made or any earlier revocation thereof.</p> <p>(10) Any reference in subsections (2), (3), (4), (5), (6), (8) and (9) to an instrument shall be deemed to include a reference to a true or office copy of the instrument deposited in accordance with subsection (1).</p> <p><i>Land Titles Act</i></p> <p><b>Registration of instruments executed by attorneys</b></p> <p>147.—(1) On lodgment for registration of any instrument executed by an attorney, the Registrar may require the original power of attorney or an office copy thereof to be</p>

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
		<p>destroy or otherwise dispose of any document or any class of document in the possession of the Recorder which the Recorder considers to be of no value for the purposes of the register.</p> <p>(2) Before selling or disposing of a document, the Recorder must mark it as no longer valid.</p> <p>(3) The Recorder is taken to be a Head of Agency for the purpose of the application of section 8 of the Archives Act 1983 to the Recorder's powers under this section.</p> <p><b>Powers of attorney not to be registered except in accordance with this Act</b></p> <p>11.—(1) The Recorder<sup>11</sup> must not register any power of attorney or other instrument except as provided in this Act and unless the power of attorney or other instrument is in accordance with this Act.</p> <p>(2) For the purposes of this section, the Recorder is not required to examine a power of</p>				<p>exhibited to him, and in case of doubt, or where he suspects impropriety, may require the execution of the power to be proved.</p> <p>(2) Where a power of attorney has been deposited in the Registry of the Supreme Court under section 48 of the Conveyancing and Law of Property Act (Cap 61), no further proof of execution shall be required by the Registrar.</p> <p>(3) Before registering any instrument executed by an attorney, the Registrar may require either –</p> <p>(a) that the power of attorney or a true copy thereof be deposited in the Registry of the Supreme Court under section 48 of the Conveyancing and Law of Property Act; or</p> <p>(b) that an office copy delivered out of the Supreme Court under section 48 of the Conveyancing and Law of Property Act be lodged in the Land Titles Registry</p>



UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
		<p>attorney or other instrument unless to ensure that it is in accordance with the forms and procedures provided by this Act.</p> <p>(3) Where –</p> <p>(a) a power of attorney or other instrument is lodged with the Recorder under this Act or any other Act which requires the document to be lodged with the Recorder; and</p> <p>(b) the document is not in accordance with this Act –</p> <p>the Recorder must –</p> <p>(c) refuse to register the power of attorney or other instrument and return it to the person who lodged it; or</p> <p>(d) advise that person that the Recorder will refuse to register it unless specified corrections are made.</p> <p>(4) Where corrections are to be made as mentioned in subsection (3) –</p>				<p>for inspection or for permanent record.</p> <p>(4) As between an attorney and any purchaser from him of registered land, and notwithstanding any agreement or stipulation to the contrary, there shall be implied an undertaking by the attorney to comply, at his own expense (or that of his principal), with all reasonable requirements of the Registrar made under this section.</p> <p><i>Rules of Court</i></p> <p><b>Filing of instruments creating powers of attorney (O. 60, r. 6)</b></p> <p>6.—(1) An instrument creating a power of attorney which is presented for deposit in the Registry of the Supreme Court under section 48 of the Conveyancing and Law of Property Act (Chapter 61), shall not be deposited therein unless the execution of the instrument has been verified in accordance with Rule 7 and the instrument is accompanied, except</p>

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
		<p>(a) the person who lodged the power of attorney or other instrument is authorised to remove it for the purpose of making the corrections and to reodge it; and</p> <p>(b) the Recorder may refuse registration if the corrections are not made within 60 days after notice of the corrections was given to that person, or within such further time as the Recorder may allow; and</p> <p>(c) the corrections are to be initialled by each person who signed the power of attorney as a party or as a witness.</p> <p>(5) Where the Recorder refuses to register a power of attorney or other instrument, he or she shall notify the person by whom the power of attorney or other instrument was lodged or that person's agent of his or her refusal, and may retain one-half of the fees paid on the lodging of the</p>				<p>where Rule 7(b) applies, by the affidavit, declaration, certificate or other evidence by which the execution was verified.</p> <p>(2) Without prejudice to section 48 of the Conveyancing and Law of Property Act Chapter 61), a certified copy of an instrument creating a power of attorney which is presented for deposit in the Registry of the Supreme Court under that section shall not be deposited therein unless —</p> <p>(a) the execution of the instrument has been verified in accordance with Rule 7;</p> <p>(b) the signature of the person who verified the copy is sufficiently verified; and</p> <p>(c) except where Rule 7(b) applies and subject to paragraph (3), the copy is accompanied by the affidavit, declaration, certificate or other</p>

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
		<p>power of attorney or other instrument.</p> <p>(6) All fees retained by the Recorder in accordance with subsection (5) are to be paid into the Consolidated Fund.</p> <p><b>Lodgment of powers of attorney, &amp;c.</b></p> <p>12.—(1) A power of attorney or other instrument under this Act may be lodged with the Recorder –</p> <p>(a) by delivery of the original document; or</p> <p>(b) if so authorised by the Recorder, by transmission to the Recorder of a copy of the original document –</p> <p>(i) as a transparency;<sup>12</sup> or print from a transparency or from a machine copy;<sup>13</sup> or</p> <p>(ii) by facsimile process; or</p> <p>(iii) in any other manner approved by the Recorder; or</p>				<p>evidence by which the execution was verified.</p> <p>(3) If the affidavit, declaration, certificate or other evidence verifying the execution of the instrument is so bound up with or attached to the instrument that they cannot conveniently be separated, it shall be sufficient for the purpose of paragraph (2) to produce and show to the proper officer in the Registry the original affidavit, declaration, certificate or other evidence and to file a certified or office copy thereof.</p> <p><b>Verification of execution of power of attorney (O. 60, r. 7)</b></p> <p>7. The execution of such an instrument or statutory declaration as is referred to in Rule 6(1) may be verified –</p> <p>(a) by an affidavit or statutory declaration sworn or made by the attesting witness or some other person in whose presence the instrument was executed, or, if no</p>

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
		<p>(c) by the preparation and lodgment of the power of attorney or other instrument in any form otherwise than as a document –</p> <p>(i) by any device used for the storage or transmission or processing of information approved by the Recorder; or</p> <p>(ii) in any other manner approved by the Recorder.</p> <p>(2) On lodgment of a power of attorney or other instrument, the Recorder must identify it by a distinctive number, a distinctive letter and number or any other identifying procedure.</p> <p>(3) A power of attorney or other instrument is taken to be registered –</p> <p>(a) if the register is kept in paper form, by a notation on the power of attorney that it has been registered; or</p>				<p>such person is available, by some impartial person who knows the signature of the donor of the power of attorney created by the instrument;</p> <p>(b) if the instrument was attested by a Commissioner for Oaths, by the signature of the Commissioner as attesting witness; or</p> <p>(c) by such other evidence as, in the opinion of the Registrar is sufficient.</p> <p><b>Inspection, etc., of powers of attorney (O. 60, r. 8)</b></p> <p>8.—(1) The Registry of the Supreme Court shall keep record of an index of all instruments and certified copies to which Rule 6 relates deposited in the said Registry and of the names of the donors of the powers of attorney created by such instruments.</p> <p>(2) Any person shall, on payment of the</p>

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
		<p>(b) if the register is kept on microfilm, by any other medium approved by the Recorder or in such device for storing or processing information as may be so approved, by the Recorder making a notation appropriate to that medium or device that the power of attorney or other instrument has been so registered.</p> <p>(4) A notation of registration is to record the date and time when a power of attorney or other instrument is registered.</p> <p><b>Authority for lodgment by electronic process</b></p> <p>13.—(1) The Recorder may make an agreement with a person authorising him or her to lodge a power of attorney or other instrument under this Act otherwise than by production of the original document.</p> <p>(2) The agreement must provide that the</p>				<p>prescribed fee, be entitled —</p> <p>(a) to search the record referred to in paragraph (1);</p> <p>(b) to inspect any document filed or deposited in the Registry in accordance with Rule 6; and</p> <p>(c) to be supplied with an office copy of such document; and a copy of any such document may be presented at the Registry to be marked as an office copy.</p>

UK	New South Wales	<p><b>Tasmania</b></p> <p>procedures to be followed –</p> <p>(a) are to be comparable with the normal procedures adopted by the Recorder and will not adversely affect the register; and</p> <p>(b) will ensure the accurate transmission of the power of attorney or other instrument.</p> <p>(3) The Recorder may require a person seeking to lodge a power of attorney or other instrument by electronic means to produce documentary evidence that he or she is authorised to do so.</p> <p><b>Lodgment of supporting documents</b></p> <p>14. The application of sections 12 and 13 extend to the lodgment by electronic means of any document required by the Recorder in support of a power of attorney.</p>	British Columbia	Hong Kong	Malaysia	Singapore
----	-----------------	---	------------------	-----------	----------	-----------

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
		<p><b>On registration, covenants for production to be inoperative</b></p> <p>54. After a power of attorney has been registered under this Act, no legal proceeding may be brought or maintained on any covenant or agreement for the production of the power of attorney and, if any such proceeding is commenced, it is sufficient that the power has been registered under this Act.</p>				
<b>Proof of instruments creating powers of attorney</b>						
<p><b>Proof of instruments creating powers of attorney</b></p> <p>3.—(1) The contents of an instrument creating a power of attorney may be proved by means of a copy which –</p> <p>(a) is a reproduction of the original made with a photographic or other device for reproducing documents in facsimile; and</p>	<p><b>Proof of powers of attorney</b></p> <p>44.—(1) A document is a certified copy of an instrument<sup>15</sup> for the purposes of this section if:</p> <p>(a) there is endorsed on the document a written certificate, to the effect that the document is a true and complete copy of the contents of the instrument of which it purports to be a copy, by:</p>	<p><b>Copies of register</b></p> <p>6.—(1) The Recorder must, on application and payment of the prescribed fee, furnish a person with a certified copy<sup>17</sup> of any part of the register.</p> <p>(2) A copy for the purposes of this section may be –</p> <p>(a) in writing; or</p> <p>(b) made by such photocopying, facsimile or electronic</p>	No provision.	<p><b>Proof of instruments creating powers of attorney</b></p> <p>3.—(1) The contents of an instrument creating a power of attorney may be proved by means of a copy which –</p> <p>(a) is a reproduction of the original made with a photographic or other device for reproducing documents in facsimile; and</p>	<p><b>Office copies as evidence</b></p> <p>11. An office copy of any document deposited in accordance with section 4 shall, when marked as provided in the last preceding section, be without further proof sufficient evidence of the contents of such document and of the deposit thereof in the office of the Registrar.</p>	<p><i>Evidence Act s 87</i></p> <p><b>Presumption as to powers of attorney</b></p> <p>87. The court shall presume that every document purporting to be a power of attorney, and to have been executed before and authenticated by a notary public or any court, Judge, Magistrate or consular officer of Singapore, was so executed and authenticated.</p>

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
<p>(b) contains the following certificate or certificates signed by the donor of the power or by a solicitor [duly certificated notary public] or stockbroker, that is to say –</p> <p>(i) a certificate at the end to the effect that the copy is a true and complete copy of the original; and</p> <p>(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.</p> <p>(2) Where a copy of an instrument creating a power of attorney has been made which complies with subsection (1) of this section, the contents of the instrument may also</p>	<p>(i) the principal<sup>16</sup> under the power of attorney created by the instrument, or</p> <p>(ii) a person (or person belonging to a class of persons) prescribed by the regulations for the purposes of this subsection, and</p> <p>(b) each page of the document bears the signature of the person who gives the certificate referred to in paragraph (a).</p> <p>(2) A legible document that is a certified copy of an instrument creating a power of attorney is evidence:</p> <p>(a) as against the principal under the power of attorney of the execution and contents of the instrument, and</p> <p>(b) as against any other person of the contents of the instrument.</p>	<p>transmission process as the Recorder determines; or</p> <p>(c) made partly in accordance with paragraph (a) and partly in accordance with paragraph (b).</p> <p><b>Confirmation of acts of attorney sufficient without production of power</b></p> <p>55. Where a person confirms in writing any deed or other act purporting to be executed or done by the person by his or her attorney, the confirmation is taken to be proof of the authority of the attorney to execute the deed or do the act at the relevant time, without production or proof of any power of attorney.</p>		<p>(b) contains the following certificate or certificates signed by the donor of the power or by a solicitor, that is to say –</p> <p>(i) a certificate at the end to the effect that the copy is a true and complete copy of the original; and</p> <p>(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.</p> <p>(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</p>	<p><b>Office copies</b></p> <p>10. A copy of any document deposited in accordance with section 4 may be presented at the office at which such document is deposited and may, after verification and on payment of the prescribed fee, be marked by the Senior Assistant Registrar as a certified copy and when so marked shall become and be an office copy of such document.</p>	<p><i>Conveyancing and Law of Property Act ss 8(5) and 48(6)</i></p> <p><b>Deposit of power of attorney</b></p> <p>(5) An office copy of an instrument so deposited shall without further proof be sufficient evidence of the contents of the instrument and of the deposit thereof in the Registry.</p> <p>(6) If the instrument so deposited is in a foreign language, an office copy of the translation deposited with the instrument shall without further proof be admissible in evidence as a correct translation of the original document.</p>



UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
<p>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.</p> <p>(3) In this section ["duly certificated notary public" has the same meaning as it has in the Solicitors Act 1974 by virtue of section 87(1) of that Act and] "stockbroker" means a member of any stock exchange within the meaning of the Stock Transfer Act 1963 or the Stock Transfer Act (Northern Ireland) 1963.</p> <p>(4) This section is without prejudice to section 4 of the Evidence and Powers of Attorney Act 1940 (proof of deposited instruments by office copy) and to any other method of proof authorised by law.</p> <p>(5) For the avoidance of doubt, in relation to an instrument made in Scotland the references to a power of attorney in this section and in</p>	<p>(3) Subsection (2) does not make a document better evidence than is the instrument of the contents of which it purports to be a copy.</p> <p>(4) This section does not affect any other method of proving the execution or contents of an instrument creating a power of attorney.</p> <p>(5) A person must not give a certificate for the purposes of this section knowing the certificate to be false.</p> <p>Maximum penalty (subsection (5)): 5 years' imprisonment.</p>			<p>complies with that subsection, taking references in it to the original as references to the copy from which the further copy is made.</p> <p>(3) In favour of a person acting in good faith a signature on a certificate under subsection (1)(b) purporting to be that of a person described as being a solicitor shall, until the contrary is proved, be deemed sufficient for the purposes of this section.</p> <p>(4) This section is without prejudice to any other method of proof authorized by any other Ordinance.</p> <p>(5) In this section "solicitor" (律師) means a person who is enrolled on the roll of solicitors kept under the Legal Practitioners Ordinance (Cap 159) and who, at the material time, is not suspended from practice.</p>		

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
<p>section 4 of the Evidence and Powers of Attorney Act 1940 include references to a factory and commission.</p> <p><i>Note.</i> The words in square brackets in subsections 3(1) and 3(3) were inserted by the Courts and Legal Services Act 1990, s 125(2), Sched 17, para 4.</p>						
<b>Statutory form for powers of attorney</b>						
<p>(As amended by Trustee Delegation Act 1999, s 3)</p>	<p><b>Creation of prescribed power of attorney</b></p> <p>8. An instrument (whether or not under seal) that is in or to the effect of the form set out in Schedule 2 (the prescribed form)<sup>19</sup> and is duly executed creates a prescribed power of attorney for the purposes of this Act.</p>	<p><b>Form of power of attorney</b></p> <p>18.—(1) A power of attorney may be made—</p> <p>(a) by deed; or</p> <p>(b) in accordance with form 1,<sup>23</sup> conferring particular powers specified in it; or</p> <p>(c) in accordance with form 2,<sup>24</sup> conferring power on the attorney to do all things that the donor may lawfully authorise an attorney to do.</p> <p>(2) An enduring power of attorney may be made under Part 4.</p>	<p><b>Short form</b></p> <p>9.—(1) A general power of attorney may be in Form 1 or Form 2 of the Schedule.<sup>25</sup></p> <p>(2) A general power of attorney, in Form 1, confers authority on the attorney and in Form 2 confers authority on more than one attorney acting separately or acting together, as the case may be, to do on behalf of the donor anything that the donor can lawfully do by an attorney, subject to the conditions and restrictions, if any, that are contained in the power of attorney.</p>	<p><b>Effect of prescribed power of attorney</b></p> <p>10.—(1) Subject to subsection (2) of this section, a general power of attorney in the form set out in Schedule 1<sup>18</sup> to this Act, or in a form to the like effect but expressed to be made under this Act, shall operate to confer—</p> <p>(a) on the donee of the power; or</p> <p>(b) if there is more than one donee, on the donees acting jointly or acting jointly or</p>	<p><b>Effect of general power of attorney in specified form</b></p> <p>7.—(1) Subject to subsection (2), a general power of attorney in the form set out in the Schedule,<sup>26</sup> or in a form to the like effect but expressed to be made under this Ordinance, shall operate to confer—</p> <p>(a) on the donee of the power; or</p> <p>(b) if there is more than one donee, on the donees acting jointly or acting jointly or</p>	<p><i>Trustees Act s 27(5) and Sched 3</i></p> <p><b>Delegation of trustee's functions by power of attorney</b></p> <p>(5) A power of attorney given under this section by a single donor—</p> <p>(a) in the form set out in the Third Schedule; or</p> <p>(b) in a form to the like effect but expressed to be made under this subsection, shall operate to delegate to the person identified in the form as the single donee of the power, the execution and the exercise of all the trusts, powers and discretions</p>

<p><b>UK</b></p> <p>severally, as the case may be, authority to do on behalf of the donor anything which he can lawfully do by an attorney.</p> <p>(2) Subject to section 1 of the Trustee Delegation Act 1999, this section does not apply to functions which the donor has as a trustee or personal representative or as a tenant for life or statutory owner within the meaning of the Settled Land Act 1935.</p>	<p><b>New South Wales</b></p> <p>lawfully authorise an attorney to do.</p> <p>(2) A prescribed power of attorney has effect subject to compliance with any conditions or limitations specified in the instrument creating the power.</p> <p><b>Prescribed power of attorney does not confer authority to act as trustee</b></p> <p>10. A prescribed power of attorney does not confer authority to exercise any function<sup>20</sup> as a trustee that is conferred or imposed on the principal.</p> <p><b>Prescribed power of attorney does not generally confer authority to give gifts</b></p> <p>11.—(1) A prescribed power of attorney does not authorise an attorney to give a gift of all or any property of the principal to any other person unless the instrument creating the power expressly authorises the giving of the gift.</p> <p><i>Note.</i> This subsection restates a rule of the</p>	<p><b>Tasmania</b></p>	<p><b>British Columbia</b></p> <p>(3) This section applies to a power of attorney made before, on or after October 14, 1987.</p>	<p><b>Hong Kong</b></p> <p>which he can lawfully do by an attorney.</p> <p>(2) This section does not apply to functions which the donor has as a trustee or personal representative.</p>	<p><b>Malaysia</b></p>	<p><b>Singapore</b></p> <p>vested in the donor as trustee (either alone or jointly with any other person or persons) under the single trust so identified.</p> <p><b>THIRD SCHEDULE</b> <i>Section 27(5)</i></p> <p><b>FORM OF POWER OF ATTORNEY UNDER SECTION 27(5)</b></p> <p>THIS GENERAL TRUSTEE POWER OF ATTORNEY is made on [date] by [name of one donor] of [address of donor] as trustee of [name or details of one trust].</p> <p>I appoint [name of one donee] of [address of donee] to be my attorney [if desired, the date on which the delegation commences or the period for which it continues (or both)] in accordance with section 27 (5) of the Trustees Act (Cap 337).</p> <p>[To be executed as a deed].</p>
--	---	------------------------	--	--	------------------------	--

<p><b>UK</b></p>	<p><b>New South Wales</b></p>	<p><b>Tasmania</b></p>	<p><b>British Columbia</b></p>	<p><b>Hong Kong</b></p>	<p><b>Malaysia</b></p>	<p><b>Singapore</b></p>
	<p>general law. Accordingly, whether a gift of all or any of the property of a principal is expressly authorised by a prescribed power of attorney is to be determined by reference to the general principles and rules of the common law and equity concerning the interpretation of powers of attorney. (2) Without limiting subsection (1), a prescribed power of attorney that includes the prescribed expression for the purposes of this subsection set out in Schedule 3<sup>21</sup> authorises an attorney to give the kinds of gifts that are specified by that Schedule for that expression.</p> <p><b>Prescribed power of attorney does not generally confer authority to confer benefits on attorneys</b></p> <p>12.—(1) A prescribed power of attorney does not authorise an attorney to execute an assurance or other document, or to do any other act, as a result of which a benefit</p>					

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
	<p>would be conferred on the attorney unless the instrument creating the power expressly authorises the conferral of the benefit.</p> <p><i>Note.</i> This subsection restates a rule of the general law. Accordingly, whether the conferral of a benefit on an attorney is expressly authorised by a prescribed power of attorney is to be determined by reference to the general principles and rules of the common law and equity concerning the interpretation of powers of attorney.</p> <p>(2) Without limiting subsection (1), a prescribed power of attorney that includes the prescribed expression for the purposes of this subsection set out in Schedule 3 authorises an attorney to confer on the attorney the kinds of benefits that are specified by that Schedule for that expression.</p>					

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
	<p><b>Prescribed power of attorney does not generally confer authority to confer benefits on third parties</b></p> <p>13.—(1) A prescribed power of attorney does not authorise an attorney to execute an assurance or other document, or to do any other act, as a result of which a benefit would be conferred on a third party<sup>22</sup> unless the instrument creating the power expressly authorises the conferral of the benefit.</p> <p><i>Note.</i> This subsection restates a rule of the general law. Accordingly, whether the conferral of a benefit on a third party is expressly authorised by a prescribed power of attorney is to be determined by reference to the general principles and rules of the common law and equity concerning the interpretation of powers of attorney.</p> <p>(2) Without limiting subsection (1), a prescribed power of attorney that includes the</p>					

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
	<p>prescribed expression for the purposes of this subsection set out in Schedule 3 authorises an attorney to confer on a third party the kinds of benefits that are specified by that Schedule for that expression.</p> <p><b>Regulations may amend Schedules 2 and 3</b></p> <p>14.—(1) The regulations may replace or amend Schedule 2 or 3 (or both).</p> <p>(2) The amendment or repeal of the prescribed form in Schedule 2, or a provision of Schedule 3 that prescribes an expression or specifies a kind of gift or benefit for the purposes of section 11(2), 12(2) or 13(2), does not:</p> <p>(a) confer any additional authority on an attorney under a power of attorney that was a prescribed power of attorney in force immediately before the day on which the amendment or repeal takes effect (an existing authority), or</p>					

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
	<p>(b) remove any authority conferred on a principal by an existing authority, or</p> <p>(c) otherwise affect the continued operation of an existing authority.</p>					
<b>Revocation of powers of attorney</b>						
<p><b>Protection of donee and third persons where power of attorney is revoked</b></p> <p>5.—(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.</p> <p>(2) Where a power of attorney has been revoked and a person, without knowledge of 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.</p>	<p><b>Part 6 Powers of attorney generally</b></p> <p><b>Division 2 Termination and suspension of powers of attorney</b></p> <p><b>Effect of vacation of office of joint and several attorneys</b></p> <p>46.—(1) If a power of attorney appoints 2 or more persons as joint attorneys,<sup>28</sup> the power of attorney is terminated if the office of one or more of the attorneys becomes vacant.<sup>29</sup></p> <p>(2) If a power of attorney appoints 2 or more persons as attorneys either severally or jointly and severally, a vacancy in the office of one or more attorneys</p>	<p><b>Revocation of power of attorney</b></p> <p>27.—(1) A power of attorney, whether registered under this Act or not, is revoked if the attorney is notified of its revocation by the donor or of the death, bankruptcy or insolvency of the donor.</p> <p>(2) A power of attorney that is registered under this Act is revoked if notification of its revocation or of the death, bankruptcy or insolvency of the donor is lodged with the Recorder.</p> <p><b>Effect on dealings with attorney in good faith</b></p> <p>28.—(1) Where a power of attorney has been revoked or the donor has</p>	<p><b>Application</b></p> <p>2.—(1) Sections 3 and 4 do not apply to agency relationships that —</p> <p>(a) are created by section 7 of the Partnership Act, or</p> <p>(b) arise under common law out of the relationship of partners to a firm and to each other.</p> <p>(2) For the purposes of this Act, if a person has knowledge<sup>32</sup> of the occurrence of an event that has the effect of terminating the authority of an agent, that person is deemed to have knowledge of the termination of the authority.</p>	<p><b>Protection of donee and third persons where power of attorney is revoked</b></p> <p>5.—(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.</p> <p>(2) Where a power of attorney has been revoked and a person, without knowledge of 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.</p>	<p><b>Revocation</b></p> <p>5. Every instrument purporting to create a power of attorney of which a true copy or an office copy has been deposited in the office of the Registrar or a senior Assistant Registrar in accordance with this Act or any law repealed by this Act whether before or after the commencement of this Act, shall, so far as the said instrument is valid and so far as may be compatible with the terms of the instrument, continue in force until notice in writing of the revocation thereof by the donor, or of the renunciation thereof by the donee, has been deposited in every office in which the office copy or true copy thereof has</p>	<p><i>Conveyancing and Law of Property Act</i></p> <p><b>Payment by attorney under power without notice of death, etc., good</b></p> <p>46.—(1) Any person making or doing any payment or act, in good faith, in pursuance of a power of attorney, shall not be liable in respect of the payment or act by reason that before the payment or act the donor of the power had died or become of unsound mind, or bankrupt, or had revoked the power, if the fact of death, unsoundness of mind, bankruptcy or revocation was not at the time of the payment or act known to the person making or doing the same.</p>



UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
<p>(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) of this section as having knowledge of the revocation only if he knows that it has been revoked in that manner.</p> <p>(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) of this section, 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 –</p> <p>(a) the transaction between that person and the donee was completed within</p>	<p>does not operate to terminate the power of attorney in relation to the other attorneys.</p> <p><b>Attorney entitled to rely on power of attorney if unaware of termination or suspension of power</b></p> <p>47. If a power of attorney is terminated or suspended,<sup>30</sup> an attorney who does an act that would have been within the scope of the power without knowing of the termination or suspension is entitled to rely on the power of attorney in relation to that act in the same manner and to the same extent as if the power had not been terminated or suspended.</p> <p><b>Certain third parties entitled to rely on acts done under terminated or suspended powers of attorney</b></p> <p>48.—(1) If a power of attorney is terminated or suspended, a third party<sup>31</sup> who deals or otherwise transacts in good faith with the attorney without knowing of the termination or suspension is entitled to rely on the</p>	<p>died or has become subject to a mental incapacity, bankrupt or insolvent, a person dealing in good faith with the attorney without notice of the revocation, death, mental incapacity, bankruptcy or insolvency is not affected by the revocation, death, mental incapacity, bankruptcy or insolvency.</p> <p>(2) In the application of subsection (1) to a power of attorney that is registered under this Act, the rights of a person dealing in good faith with the attorney are not preserved if notice of the revocation, death, mental incapacity, bankruptcy or insolvency has been given to the Recorder.</p> <p><b>Revocation of unregistered power of attorney</b></p> <p>29. Where –</p> <p>(a) a power of attorney is not registered under this Act; and</p> <p>(b) the attorney cannot be found or it is impracticable to give notice of revocation or of the</p>	<p><b>Liability of agent</b></p> <p>3. If an agent<sup>33</sup> purports to act on behalf of a principal at a time when the agent's authority to do so has been terminated and –</p> <p>(a) the act is within the scope of the agent's former authority, and</p> <p>(b) the agent has no knowledge of the termination,</p> <p>then, for the purpose of determining the liability of the agent for the act, the agent is deemed to have had the authority to so act.</p> <p><b>Effect of termination</b></p> <p>4.—(1) If –</p> <p>(a) the authority of an agent has been terminated, and</p> <p>(b) a person who has no knowledge of the termination purports to deal with the principal through the agent,</p> <p>then, for the purpose of determining the legal rights and obligations of the principal in relation</p>	<p>(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.</p> <p>(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 –</p> <p>(a) the transaction between that person and the donee was completed within</p>	<p>been so deposited, or either the donor or the donee has died or the donee has become of unsound mind, or the donor has been adjudged to be of unsound mind or a receiving order has been made against him in bankruptcy.</p> <p><b>Payment by attorney under power without notice of death, etc., good</b></p> <p>8.—(1) Any person making or doing any payment or act in good faith in pursuance of a power of attorney shall not be liable in respect of the payment or act by reason that before the payment or act the donor of the power had died or became mentally disordered or of unsound mind or bankrupt or had revoked the power if the fact of death, mental disorder, unsoundness of mind, bankruptcy, or revocation was not at the time of the payment or act known to the person making or doing the same.</p> <p>(2) This section shall not affect any right against the payee of any</p>	<p>(2) This section shall not affect any right against the payee of any person interested in the money so paid; and that person shall have the like remedy against the payee as he would have had against the payer if the payment had not been made by him.</p> <p><b>Statutory declaration by attorney</b></p> <p>47.—(1) A statutory declaration by an attorney to the effect that he has not received any notice or information of the revocation of such power of attorney by death or otherwise shall, if made immediately before or within 3 months after any such payment or act, be taken to be conclusive proof of such non-revocation at the time when the payment or act was made or done.</p> <p>(2) Where the donee of the power of attorney is a corporation aggregate, the officer appointed to act for the corporation in the execution of the power may make the statutory declaration in</p>

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
<p>and the donee was completed within twelve months of the date on which the power came into operation; or</p> <p>(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.</p> <p>(5) Without prejudice to subsection (3) of this section, 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.</p> <p>(6) In this section “purchaser” and “purchase” have the meanings specified in section 205(1) of the Law of Property Act.<sup>27</sup></p> <p>(7) This section applies whenever the power of attorney was created but only to acts and</p>	<p>power of attorney in relation to that dealing or transaction in the same manner and to the same extent as if the power had not been terminated or suspended.</p> <p>(2) Subsection (1) does not entitle an attorney to rely on a power in support of an act within the scope of the power done by the attorney with notice of the termination or suspension of the power to the extent that it concerns authority to do that act.</p> <p><b>Attorney acting with knowledge of termination or suspension of power</b></p> <p>49.—(1) An attorney under a power of attorney that is terminated must not do any act or thing under the power of attorney if the attorney knows of the termination at the time the attorney does the act or thing.</p> <p>Maximum penalty: 5 years’ imprisonment.</p> <p>(2) An attorney under a power of attorney must not do any act or thing under the power of</p>	<p>death, mental incapacity, bankruptcy or insolvency of the donor to the attorney –</p> <p>the power of attorney may be revoked by lodging notice of the revocation together with a copy of the power of attorney with the Recorder.</p> <p><b>Validity of payment by attorney under power without notice of death, &amp;c.</b></p> <p>51.—(1) A person making a payment or doing any act, in good faith, under a power of attorney is not liable in respect of the payment or act by reason that before the payment or act the donor –</p> <p>(a) had died; or</p> <p>(b) had become subject to a mental incapacity, bankrupt or insolvent; or</p> <p>(c) had revoked the power –</p> <p>if the fact of death, mental incapacity, bankruptcy, insolvency</p>	<p>to that person, the transaction is, in favour of that person, deemed to be as valid as if the authority had existed.</p> <p>(2) Despite subsection (1), if the principal has –</p> <p>(a) by express revocation terminated the authority of an agent, and</p> <p>(b) given notice of the termination to the agent,</p> <p>the liability of the principal to any person for the subsequent acts of the agent must be determined without regard to this Act.</p> <p>(3) If the authority of an agent to act on behalf of the agent’s principal has been terminated, but –</p> <p>(a) the agent purporting to act for the principal enters into a transaction with a person (called in this section “the intermediate party”),</p> <p>(b) the rights of another person (called in</p>	<p>twelve months of the date on which the power came into operation; or</p> <p>(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.</p> <p>(5) Without prejudice to subsection (3), for the purposes of this section 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.</p> <p>(6) In this section –</p> <p>“purchaser” (購買人) means –</p> <p>(a) a purchaser in good faith for valuable consideration;</p> <p>(b) a lessee, mortgagee or other person who for valuable consideration acquires an interest</p>	<p>person interested in the money so paid and that person shall have the like remedy against the payee as he would have had against the payer if the payment had not been made by him.</p>	<p>like manner as if that officer had been the donee of the power.</p> <p>(3) Where probate or letters of administration have been granted to any person, as attorney for some other person, this section shall apply as if the payment made or acts done under the grant had been made or done under a power of attorney.</p> <p><i>Land Titles Act</i></p> <p><b>Exoneration of purchasers</b></p> <p>148.—(1) In favour of a purchaser of registered land claiming through an instrument executed by an attorney, the power under which the attorney purports to act shall be presumed to be in full force and effect at the time of such execution unless the purchaser, prior to completion of the purchase, has received notice of the revocation of the power, and the Registrar shall not be concerned to inquire as to whether or not any such notice was received.</p> <p>(2) This section shall not operate to prolong the</p>

<p>UK</p> <p>transactions after the commencement of this Act.</p> <p><b>Additional protection for transferees under stock exchange transactions</b></p> <p>6.—(1) Without prejudice to section 5 of this Act, where –</p> <p>(a) the donee of a power of attorney executes, as transferor, an instrument transferring registered securities; and</p> <p>(b) the instrument is executed for the purposes of a stock exchange transaction,</p> <p>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.</p> <p>(2) In this section “registered securities” and “stock exchange transaction” have the</p>	<p><b>New South Wales</b></p> <p>attorney where the authority to do that act or thing has been suspended if the attorney knows of the suspension at the time the attorney does the act or thing.</p> <p>Maximum penalty: 5 years’ imprisonment.</p> <p><b>Application of section 76 of Protected Estates Act 1983</b></p> <p>50. Section 76 of the Protected Estates Act 1983 makes provision in respect of powers of attorney made by principals who are subject to management under that Act.</p> <p><i>Note.</i> Section 76 of the Protected Estates Act 1983 provides that a power of attorney is:</p> <p>(a) not terminated only because the estate of the principal has become subject to management under that Act, and</p> <p>(b) suspended while the estate of the principal is subject to management under that Act.</p>	<p><b>Tasmania</b></p> <p>or revocation was not at the time of the payment or act known to the person making the payment or doing the act.</p> <p>(2) This section does not affect a right against the payee of any person interested in any money so paid and that person has the same remedy against the payee as he or she would have had against the person making the payment if the payment had not been made by him or her.</p> <p><b>Validity of acts done under power after registration of power and before registration of revocation</b></p> <p>52. An act, deed or instrument done, executed or signed by the attorney of any power of attorney registered under this Act within the scope of the authority conferred –</p> <p>(a) after the death, bankruptcy or insolvency of the donor, or the revocation of the power; and</p>	<p><b>British Columbia</b></p> <p>this section “the stranger”) are dependent on the validity of the transaction entered into by the agent with the intermediate party, and</p> <p>(c) the stranger had, at the material time, no knowledge of the termination of the authority of the agent,</p> <p>then, for the purpose of determining the legal rights and obligations of the principal in relation to the stranger, the intermediate party is conclusively deemed to have had no knowledge of the termination.</p>	<p><b>Hong Kong</b></p> <p>in property; and</p> <p>(c) an intending purchaser; and</p> <p>“valuable consideration” (有值代價) includes marriage but not a nominal consideration in money.</p> <p>(7) This section applies whenever the power of attorney was created but only to acts and transactions after the commencement of this Ordinance.</p> <p>(8) No statutory declaration relating to a power of attorney made under subsection (4)(b) at any time after the commencement of the Powers of Attorney (Amendment) Ordinance 1987 (34 of 1987) shall be sufficient if made before –</p> <p>(a) a solicitor who acted for the declarant or the donee of the power of attorney in the transaction referred to in subsection (2);</p> <p>(b) a solicitor acting, or who has acted, for a party in any transaction affected</p>	<p><b>Malaysia</b></p>	<p><b>Singapore</b></p> <p>duration of a power which is expressed to terminate on a specified day, nor shall it validate any act of the attorney done after that day.</p> <p>(3) An attorney who purports to act in exercise of a power after he has received notice of its revocation shall be liable to the same penalties as if he had made a statutory declaration that, at the time of so purporting to act, the power had not been revoked.</p> <p>(4) Nothing in this section shall prejudice the right of a principal to recover damages from, or to institute other proceedings against, an agent who has exceeded his authority.</p>
---	--	---	--	---	------------------------	--

<p><b>UK</b></p> <p>same meanings as in the Stock Transfer Act 1963.</p>	<p><b>New South Wales</b></p>	<p><b>Tasmania</b></p> <p>(b) before the registration of the death, bankruptcy, insolvency or revocation under this Act –</p> <p>is, in favour of a person who in good faith and without notice of the death, bankruptcy, insolvency or revocation has dealt with the attorney in the name of the donor, as valid and effectual as if the death, bankruptcy, insolvency or revocation had not taken place.</p> <p><b>Death, &amp;c., of donor of power may be registered</b></p> <p>17.—(1) Where a power of attorney has been registered under this Act, notice of the death, bankruptcy or insolvency of the donor or of revocation of the power of attorney by the donor is to be registered as provided by subsection (2).</p> <p>(2) For the purposes of subsection (1), there is to be registered –</p> <p>(a) a declaration made by a person of the</p>	<p><b>British Columbia</b></p>	<p><b>Hong Kong</b></p> <p>by the statutory declaration;</p> <p>(c) a partner, clerk or employee of a solicitor mentioned in paragraph (a) or (b); or</p> <p>(d) a partner, clerk or employee of a partner of a solicitor mentioned in paragraph (a) or (b).</p> <p>(9) For the avoidance of doubt, it is hereby declared that a statutory declaration made under subsection (4)(b) at any time prior to the commencement of the Powers of Attorney (Amendment) Ordinance 1987 (34 of 1987) shall not be invalid or otherwise ineffective for its purpose solely by reason of the fact that it was made before any solicitor, partner, clerk or employee mentioned in subsection (8).</p>	<p><b>Malaysia</b></p>	<p><b>Singapore</b></p>
--	-------------------------------	--	--------------------------------	---	------------------------	-------------------------

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
		<p>fact of the death, bankruptcy or insolvency of the donor of a power of attorney made before a person having authority to administer an oath in the place, whether in Tasmania or elsewhere, where the declaration is made; or</p> <p>(b) an instrument of revocation of a power of attorney; or</p> <p>(c) a notice of revocation under the hand of the donor of a power of attorney; or</p> <p>(d) in the case of an enduring power of attorney that is revoked, or of which the terms are varied, by an order of the Board under section 33, a copy of that order.</p>				

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
<b>Irrevocable powers of attorney</b>						
<p><b>Powers of attorney given as security</b></p> <p>4.—(1) Where a power of attorney is expressed to be irrevocable and is given to secure —</p> <p>(a) a proprietary interest of the donee of the power; or</p> <p>(b) the performance of an obligation owed to the donee,</p> <p>then, so long as the donee has that interest or the obligation remains undischarged, the power shall not be revoked —</p> <p>(i) by the donor without the consent of the donee; or</p> <p>(ii) by the death, incapacity or bankruptcy of the donor or, if the donor is a body corporate, by its winding up or dissolution.</p> <p>(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</p>	<p><b>Irrevocable powers of attorney</b></p> <p>15. An instrument that creates a power of attorney creates an irrevocable power of attorney for the purposes of this Act if:</p> <p>(a) the instrument is expressed to be irrevocable, and</p> <p>(b) the instrument is given for valuable consideration<sup>34</sup> or is expressed to be given for valuable consideration.</p> <p><b>Effect of irrevocable powers of attorney</b></p> <p>16.—(1) The power conferred by an irrevocable power of attorney is not revoked or otherwise terminated by, and remains effective despite, the occurrence of any of the following:</p> <p>(a) anything done by the principal without the concurrence of the attorney,</p> <p>(b) the bankruptcy<sup>35</sup> of the principal,</p>	<p><b>Effect of power of attorney for value made irrevocable</b></p> <p>24. If a power of attorney given for valuable consideration is in the instrument creating the power expressed to be irrevocable, the following provisions have effect in favour of a purchaser:</p> <p>(a) the power is not to be revoked at any time, either by any thing done by the donor of the power without the concurrence of the attorney or by the death, mental incapacity, bankruptcy or insolvency of the donor;</p> <p>(b) an act done at any time by the attorney, under the power, is as valid as if any thing done by the donor of the power without the concurrence of the attorney had not been done or as if the death, mental</p>	<p>No provision.</p>	<p><b>Powers of attorney given as security</b></p> <p>4.—(1) Where a power of attorney is expressed to be irrevocable and is given to secure —</p> <p>(a) a proprietary interest of the donee of the power; or</p> <p>(b) the performance of an obligation owed to the donee,</p> <p>then, so long as the donee has that interest or the obligation remains undischarged, the power shall not be revoked —</p> <p>(i) by the donor without the consent of the donee; or</p> <p>(ii) by the death, incapacity or bankruptcy of the donor or, if the donor is a corporation, by its winding up or dissolution.</p> <p>(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,</p>	<p><b>Powers of attorney given for valuable consideration</b></p> <p>6.—(1) If a power of attorney, given for valuable consideration, is in the instrument creating the power expressed to be irrevocable, then, in favour of a purchaser —</p> <p>(a) the power shall not be revoked at any time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, marriage, mental disorder, unsoundness of mind, or bankruptcy of the donor of the power; and</p> <p>(b) any act done at any time by the donee of the power, in pursuance of the power, shall be as valid as if anything done by the donor without the concurrence of the donee of the power,</p>	<p><i>Conveyancing and Law of Property Act</i></p> <p><b>Effect of power of attorney, for value or not, made irrevocable for fixed time</b></p> <p>44. If a power of attorney, whether given for valuable consideration or not, is in the instrument creating the power expressed to be irrevocable for a fixed time therein specified, then in favour of a purchaser —</p> <p>(a) the power shall not be revoked for and during that fixed time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, marriage, unsoundness of mind or bankruptcy of the donor of the power;</p> <p>(b) any act done within that fixed time by the donee of the power in pursuance of the power shall</p>

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
<p>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.</p> <p>(3) This section applies to powers of attorney whenever created.</p> <p><b>Protection of donee and third persons where power of attorney is revoked</b></p> <p>5.—(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) of this section as having knowledge of the revocation only if he knows that it has been revoked in that manner.</p>	<p>(c) the mental incapacity of the principal,</p> <p>(d) the principal becoming a person who is a temporary patient, a continued treatment patient or a forensic patient within the meaning of the Mental Health Act 1990, or a protected person within the meaning of the Protected Estates Act 1983,</p> <p>(d1) the principal becoming a person who is a protected missing person within the meaning of the Protected Estates Act 1983,</p> <p>(e) the death of the principal,</p> <p>(f) if the principal is a corporation, the dissolution of the corporation.</p> <p>(2) Subsection (1) has effect except to the extent that the instrument creating the irrevocable power of attorney provides otherwise.</p> <p><i>Note.</i> Division 2 of Part 5 enables the Supreme</p>	<p>incapacity, bankruptcy or insolvency of the donor had not happened;</p> <p>(c) neither the attorney nor the purchaser is prejudicially affected by notice of anything done by the donor of the power without the concurrence of the attorney or by notice of the death, mental incapacity, bankruptcy or insolvency of the donor.</p> <p><b>Effect of power of attorney irrevocable for fixed period</b></p> <p>25. If a power of attorney, whether given for valuable consideration or not, is in the instrument creating the power expressed to be irrevocable for a fixed period specified in the power, not exceeding one year from the date of the instrument, the following provisions have effect in favour of a purchaser:</p> <p>(a) the power is not to be revoked, for and</p>		<p>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.</p> <p>(3) This section applies to powers of attorney whenever created.</p>	<p>or the death, marriage, mental disorder, unsoundness of mind, or bankruptcy of the donor of the power, had not been done or happened; and</p> <p>(c) neither the donee of the power, nor the purchaser, shall at any time be prejudicially affected by notice of anything done by the donor of the power, without the concurrence of the donee of the power, or of the death, marriage, mental disorder, unsoundness of mind, or bankruptcy of the donor of the power.</p> <p>(2) This section applies to powers of attorney created by instruments executed either before or after the commencement of this Act.</p> <p><b>Powers of attorney expressed to be irrevocable for a fixed time</b></p> <p>7. If a power of attorney, whether given for</p>	<p>be as valid as if anything done by the donor of the power, without the concurrence of the donee of the power, or the death, marriage, unsoundness of mind or bankruptcy of the donor of the power had not been done or happened; and</p> <p>(c) neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice of anything done by the donor of the power during that fixed time without the concurrence of the donee of the power or of the death, marriage, unsoundness of mind or bankruptcy of the donor of the power within that fixed time.</p>

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
	<p>Court to order the termination of an irrevocable power of attorney in certain circumstances.</p> <p><b>Supreme Court may order the termination of irrevocable power of attorney</b></p> <p>28. The Supreme Court may order that an irrevocable power of attorney is terminated and may order that the instrument creating the power be delivered up for cancellation if the Court considers that:</p> <p>(a) the objects of the power of attorney have been carried out, or</p> <p>(b) the objects of the power of attorney have become incapable of being carried out, or</p> <p>(c) the power of attorney is otherwise exhausted.</p>	<p>during that fixed period, either by any thing done by the donor of the power without the concurrence of the attorney or by the death, mental incapacity, bankruptcy or insolvency of the donor;</p> <p>(b) any act done within that fixed time, by the attorney under the power, is as valid as if any thing done by the donor of the power without the concurrence of the attorney had not been done or as if the death, mental incapacity, bankruptcy or insolvency of the donor had not happened;</p> <p>(c) neither the attorney nor the purchaser is at any time prejudicially affected by notice, either during or after that fixed period, of any thing done by the donor of the power during that fixed period</p>			<p>valuable consideration or not, is in the instrument creating the power expressed to be irrevocable for a fixed time therein specified, then, in favour of a purchaser –</p> <p>(a) the power shall not be revoked, for and during that fixed time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, marriage, mental disorder, unsoundness of mind, or bankruptcy of the donor of the power; and</p> <p>(b) any act done within that fixed time, by the donee of the power, in pursuance of the power, shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, marriage, mental disorder, unsoundness of mind, or bankruptcy</p>	



UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
		without the concurrence of the attorney or by notice of the death, mental incapacity, bankruptcy or insolvency of the donor within that fixed period.			of the donor of the power, had not been done or happened; and  (c) neither the donee of the power, nor the purchaser, shall at any time be prejudicially affected by notice either during or after that fixed time of anything done by the donor of the power during that fixed time, without the concurrence of the donee of the power, or of the death, marriage, mental disorder, unsoundness of mind, or bankruptcy of the donor of the power within that fixed time.	
<b>Execution of documents etc by donee under power of attorney</b>						
<i>(As amended by the Law of Property (Miscellaneous Provisions) Act 1989, Sched 1 para 7 and Sched 2)</i>  <b>Execution of instruments etc by donee of power of attorney</b>  7.—(1) If the donee of a power of attorney is an	<b>Part 6</b> <b>Powers of attorney generally</b>  <b>Division 1</b> <b>General provisions</b>  Attorney may execute instruments and do other things in own name	<b>Execution under power of attorney</b>  23.—(1) An attorney may execute any assurance or instrument or do any thing in the attorney's own name and by the attorney's own signature and by the attorney's own seal, where sealing is required,	<b>Deeds</b>  7. A deed executed by an attorney under the seal of the attorney on behalf of a donor, whether an individual or corporation,  (a) is binding on the donor if it comes within the scope of the attorney's	<b>Execution of instruments, etc by donee of power of attorney</b>  6.—(1) The donee of a power of attorney may, if he thinks fit—  (a) execute any instrument with his own signature and,	No provision.	<i>Conveyancing and Law of Property Act</i>  <b>Execution under power of attorney</b>  45.—(1) The donee of a power of attorney may, if he thinks fit, execute or do any assurance, instrument or thing in and with his own name and signature and his

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
<p>individual, he may, if he thinks fit –</p> <p>(a) execute any instrument with his own signature, and</p> <p>(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.</p> <p><i>Note.</i> The words [ ] in section 7(1) are deleted by Law of Property (Miscellaneous Provisions) Act 1989 (c 34, SIF 98:1), s 4, Sched 2)</p> <p>(2) For the avoidance of doubt it is hereby declared that an instrument to which subsection (3) of section 74 of the Law of Property Act 1925 applies may be executed either as provided in that subsection or as provided in this section.</p> <p>(3) This section is without prejudice to any</p>	<p>43.—(1) An attorney may, in the exercise of the power:</p> <p>(a) execute any assurance or instrument with the attorney's own signature and, where sealing is required, with the attorney's own seal, or</p> <p>(b) do any other thing in the attorney's own name.</p> <p>(2) An assurance or instrument executed, or thing done, in accordance with subsection (1) is as effectual in law as if executed or done by the attorney with the signature and seal or, as the case may be, in the name, of the principal.</p>	<p>by the authority of the donor.</p> <p>(2) An assurance, instrument or thing so executed or done has the same effect as if it had been executed or done by the attorney in the name and with the signature and seal of the donor.</p>	<p>authority, and</p> <p>(b) is of the same effect as if it were under the seal of the donor.</p>	<p>where sealing is required, with his own seal; and</p> <p>(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.</p> <p>(2) For the avoidance of doubt it is hereby declared that an instrument may be executed on behalf of a person by a donee of a power of attorney either as provided in this section or as provided in any other Ordinance.</p> <p>(3) This section is without prejudice to a provision in any other Ordinance requiring an instrument to be executed by a person specified therein.</p> <p>(4) This section applies to powers of attorney whenever created.</p>		<p>own seal, where sealing is required, by the authority of the donor of the power.</p> <p>(2) Every assurance, instrument and thing so executed and done shall be as effectual in law, to all intents, as if had been executed or done by the donee of the power in the name and with the signature and seal of the donor thereof.</p> <p>(3) This section shall apply to powers of attorney created by instruments executed before, on or after 1st August 1886.</p>

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
<p>statutory direction requiring an instrument to be executed in the name of an estate owner within the meaning of the said Act of 1925.</p> <p>(4) This section applies whenever the power of attorney was created.</p>	<p><b>Application of general law to powers of attorney</b></p> <p>7.—(1) This Act does not affect the operation of any principle or rule of the common law or equity in relation to powers of attorney except to the extent that this Act provides otherwise, whether expressly or by necessary intention.</p> <p>(2) This Act does not affect the operation of Part 3 of the Conveyancing Act 1919 except to the extent that this Act provides otherwise, whether expressly or by necessary intention.</p> <p><i>Note.</i> Part 3 of the Conveyancing Act 1919 contains general provisions relating to the</p>	<p><b>Division 3 – Effect of powers of attorney</b></p> <p><b>Application of Division</b></p> <p>19. This Division applies to powers of attorney executed either before or after the commencement of this Act.</p> <p><b>Authority conferred by power of attorney</b></p> <p>20. A power of attorney operates to confer power on the attorney to execute any assurance or instrument or do any thing which the donor may execute or do if the performance of which may be delegated by the donor, but the exercise of the power is subject to any conditions or limitations expressed in</p>	<p><b>Probate or administration granted to an attorney</b></p> <p>5. If probate or letters of administration have been granted to a person as attorney for some other person, sections 1 to 4 apply as if the payments made or acts done under the grant had been made or done under a power of attorney of which that other person was the donor.</p> <p><b>Corporation may appoint attorney</b></p> <p>6.—(1) A corporation within the legislative jurisdiction of the Legislature may, by instrument in writing under its corporate seal, empower a person, in respect of a specified matter or purpose, as its</p>	<p><b>Mental incapacity</b></p> <p>1A.—(1) A person shall be regarded as being mentally incapable or suffering from mental incapacity for any purpose relating to a power of attorney for which the fact that a person is mentally incapable or is suffering from mental incapacity is relevant, if –</p> <p>(a) he is suffering from mental disorder or mental handicap and –</p> <p>(i) is unable to understand the effect of the power of attorney; or</p> <p>(ii) is unable by reason of his mental disorder or mental</p>		<p><i>Land Titles Act</i></p> <p><b>Interpretation of this Part</b></p> <p>146. In this Part, “attorney” means any person appointed by an instrument under seal to act as the agent for or on behalf of a principal in relation to transactions with registered land, whether the agent is called attorney, receiver, broker, factor or otherwise and, where the context admits, “power” means the instrument by which an attorney is appointed.</p> <p><b>General attorneys</b></p> <p>149.—(1) Where in a power the attorney is described as the “general attorney” of the principal, the attorney shall be presumed by purchasers</p>
<p><b>Other provisions</b></p>						

<p><b>UK</b></p>	<p>execution and effect of deeds.</p> <p>-----</p> <p><b>Part 6</b> <b>Powers of attorney generally</b></p> <p><b>Division 1</b> <b>General provisions</b></p> <p><b>Delegation of power of attorney</b></p> <p>45.—(1) An attorney under a power of attorney cannot appoint a substitute, delegate or sub-attorney unless the instrument creating the power expressly provides for the attorney to do so.<sup>36</sup></p> <p>(2) Nothing in this section enables an attorney irrevocably to appoint a substitute, delegate or sub-attorney unless the instrument creating the power of attorney expressly provides for the attorney to do so.</p> <p>-----</p>	<p><b>Tasmania</b></p> <p>the power of attorney.</p> <p><b>Nature of authority conferred</b></p> <p>21. The authority conferred by the power of attorney, according to the tenor of the instrument by which it is conferred, may be unlimited or may be limited to specific acts and any such limitations may relate to the mode in which, or the time and place at which, the authority may be exercised.</p> <p><b>Duration of power of attorney</b></p> <p>22. A power of attorney remains in force until —</p> <p>(a) it is revoked under this Act; or</p> <p>(b) it is terminated as mentioned in section 17(2); or</p> <p>(c) the purpose or time for which it was created has been fulfilled or has passed.</p> <p>-----</p>	<p><b>British Columbia</b></p> <p>attorney, to execute deeds or documents on its behalf.</p> <p>(2) An instrument executed by an attorney on behalf of the corporation is, if it comes within the scope of the attorney's authority, binding on the corporation and of the same effect as if it had been executed by the corporation.</p>	<p><b>Hong Kong</b></p> <p>handicap to make a decision to grant a power of attorney; or</p> <p>(b) he is unable to communicate to any other person who has made a reasonable effort to understand him, any intention or wish to grant a power of attorney.</p> <p>(2) For the purposes of subsection (1), “mental disorder” (精神紊亂) and “mental handicap” (弱智) have the meanings assigned to them by the Mental Health Ordinance (Cap 136).</p>	<p><b>Malaysia</b></p>	<p><b>Singapore</b></p> <p>of registered land to have power to do all things the doing of which could lawfully be delegated by the principal.</p> <p>(2) This section shall apply only —</p> <p>(a) to powers executed within Singapore; and</p> <p>(b) to powers executed outside Singapore which are expressed to be made in pursuance of this section.</p> <p>(3) The generality of the authority of an attorney who has been appointed a “general attorney” shall not be restricted by reason of the fact that the instrument appointing him also confers specific powers.</p> <p>(4) A general attorney may be appointed in relation to one or more specified items of property, and his authority as general attorney, and the exoneration conferred by this section, shall be restricted to those items.</p>
------------------	--	---	---	--	------------------------	---

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
	<p><b>Part 5</b> <b>Review of powers of attorney</b></p> <p><b>Division 1</b> <b>General</b></p> <p><b>Review tribunals</b></p> <p>26. Each of the following is a review tribunal for the purposes of this Part:</p> <p>(a) the Guardianship Tribunal,<sup>37</sup></p> <p>(b) the Supreme Court.</p> <p><b>Concurrent jurisdiction of review tribunals</b></p> <p>27.—(1) If a provision of this Part confers a function on any review tribunal, the jurisdiction to exercise that function is conferred on each review tribunal concurrently.</p> <p>(2) A person cannot make an application to a review tribunal for the exercise of a function conferred on the tribunal by this Part if the person has already applied to another review tribunal for the exercise of the same function in respect of the same (or</p>	<p><b>Appointment of attorney by class</b></p> <p>26.—(1) A power of attorney is taken to be valid notwithstanding that the attorney is expressed to be appointed as a member of a specified class of persons.</p> <p>(2) Where a person purporting to act as attorney of the donor under any such power of attorney states in writing that he or she is authorised to act as a member of the specified class –</p> <p>(a) any other person dealing with the purported attorney may rely on the statement as sufficient authority for him or her to act as such at the relevant time under the power of attorney; and</p> <p>(b) the statement is taken to be evidence that the purported attorney was, at the relevant time, authorised to act as such under the power of attorney.</p>				<p><b>Investigation and registration fees</b></p> <p>150.—(1) Any purchaser of registered land from an attorney who is not a “general attorney” within the meaning of section 149 shall be entitled to be paid by the attorney —</p> <p>(a) the sum of \$100 towards the costs of investigating title; and</p> <p>(b) any additional registration fee which may be prescribed for instruments executed by attorneys.</p> <p>(2) Any agreement, condition or stipulation in contravention of this section shall be void.</p> <p>(3) Where an attorney proves to the satisfaction of the Registrar that the power under which he acts is likely to be used in a series or course of similar transactions, and that complications are not likely to arise in the interpretation of the power, the Registrar may, by an endorsement on the</p>

<p><b>UK</b></p>	<p><b>New South Wales</b></p>	<p><b>Tasmania</b></p>	<p><b>British Columbia</b></p>	<p><b>Hong Kong</b></p>	<p><b>Malaysia</b></p>	<p><b>Singapore</b></p>
<p>substantially the same) matter. (3) However, subsection (2) does not prevent a person from making an application to a review tribunal for the exercise of a function under this Part if the earlier application for the exercise of the same function has been withdrawn with the approval of the review tribunal in which the application was made. (4) Subsections (1)–(3) do not apply to a provision of this Part that confers a function on the Guardianship Tribunal or the Supreme Court expressly.</p>	<p>----- <b>Part 6 – Foreign Powers of Attorney</b> <b>Application of Part</b> 41. This Part extends to an instrument creating or revoking a power of attorney that was executed before the commencement of this Act and to documents executed under any such power before that commencement.</p>	<p><b>Recognition of registration in other States and Territories</b> 42.—(1) An instrument creating a power of attorney that is registered in another State or a Territory under a law that corresponds to this Act is taken to be registered in Tasmania for the purposes of this Act. (2) For the purposes of this section, the provisions for filing and noting of instruments of the Transfer of Land Act 1893 of Western Australia are taken to be a corresponding law.</p>	<p></p>	<p></p>	<p></p>	<p>power or a copy thereof, exempt all transactions or any particular kind or kinds of transactions from this section, and thereupon, for the duration and within the limits of that exemption, additional fees or costs as prescribed by this section are not payable.</p>
<p><b>Division 2</b> <b>Termination of irrevocable powers of attorney</b> <b>Supreme Court may order the termination of irrevocable power of attorney</b> 28. The Supreme Court may order that an irrevocable power of attorney is terminated and may order that the instrument creating the</p>	<p></p>	<p></p>	<p></p>	<p></p>	<p></p>	<p></p>

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
<p>power be delivered up for cancellation if the Court considers that:</p> <p>(a) the objects of the power of attorney have been carried out, or</p> <p>(b) the objects of the power of attorney have become incapable of being carried out, or</p> <p>(c) the power of attorney is otherwise exhausted.</p>	<p><b>Registration of foreign powers of attorney</b></p> <p>43.—(1) An instrument creating or revoking a power of attorney may be registered in Tasmania for the purposes of this Act, whether or not it was executed in accordance with the law of Tasmania.</p> <p>(2) If any such instrument is not executed in accordance with the law of Tasmania, it may be registered in Tasmania only if it was executed in accordance with the law of another State or a Territory or with the law of the place in which it was executed.</p> <p>(3) This section does not affect the operation of any law that prohibits the registration of an instrument unless the requisite amount of tax or duty has been paid in respect of the instrument.</p>	<p><b>Proof of foreign execution or registration</b></p> <p>44.—(1) For the purposes of this Part,</p>				
<p><b>Division 3</b></p> <p><b>Confirmation of powers conferred when principal mentally incapacitated</b></p>	<p><b>Supreme Court may make orders confirming powers understood by principal</b></p> <p>29. The Supreme Court may, on the application of a principal under a power of attorney, confirm (whether in whole or in part) any power to do an act under the power of attorney if it appears to the Court that the nature of the act was</p>					

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
	<p>not beyond the understanding of the principal through mental incapacity at the time when the power was given.</p> <p><b>Supreme Court may make orders confirming powers subsequently affirmed by principal</b></p> <p>30. The Supreme Court may, on the application of a principal under a power of attorney, confirm (whether in whole or in part) any power to do an act under the power of attorney that was beyond the understanding of the principal through mental incapacity at the time the power was given to the extent that it appears to the Court that:</p> <p>(a) the principal has affirmed the power before or during the proceedings on the application, and</p> <p>(b) the principal had sufficient mental capacity to affirm the power at the time the affirmation was made.</p>	<p>a certificate of a legal practitioner that –</p> <p>(a) an instrument creating a power of attorney is registered in another State or a Territory; or</p> <p>(b) an instrument creating or revoking a power of attorney was executed in accordance with the law of a specified State or Territory or the law of the place of execution –</p> <p>is evidence of that fact.</p> <p>(2) A legal practitioner who gives the certificate may be a legal practitioner in Australia or in the other place of execution.</p> <p>(3) A certificate referred to in subsection (1)(b) is not evidence of the capacity of the donor to create or revoke the power of attorney.</p> <p><b>Registration based on certified copies</b></p> <p>45.—(1) The Recorder may register a power of attorney or other</p>				



UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
	<p><b>Supreme Court may make orders confirming powers in best interests of principal</b></p> <p>31.—(1) The Supreme Court may, on the application of a principal under a power of attorney (whether or not an enduring power of attorney), confirm (whether in whole or in part) any power to do an act under the power of attorney if it appears to the Court that:</p> <p>(a) the principal is incapable of affirming the power because:</p> <p>(i) the principal lacks capacity by reason of the continuation of mental incapacity that affected the principal when the principal gave the power, or</p> <p>(ii) the principal is incommunicate,<sup>38</sup> and</p> <p>(b) it is for the benefit of the principal that the power be</p>	<p>instrument that has been certified as mentioned in section 44.</p> <p>(2) The Recorder may register a power of attorney or other instrument if a copy of it has been certified by an authority exercising functions similar to those of the Recorder under this Act to be a true copy of that power of attorney or other instrument.</p> <p><b>Registration of instruments of variation or revocation</b></p> <p>46. Where a power of attorney is registered under section 43 or 45, the Recorder may register an instrument varying or revoking the power of attorney.</p>				

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
	<p>confirmed in whole or in part.</p> <p>(2) Subsection (1):</p> <p>(a) applies only if and to the extent that a contrary intention is not expressed in the instrument creating the power of attorney, and</p> <p>(b) has effect subject to the terms of the instrument creating the power of attorney.</p> <p><b>Effect of orders made by Supreme Court under this Division</b></p> <p>32. If the Supreme Court makes an order under this Division confirming a power of an attorney (whether in whole or in part), any act done by the attorney after the order takes effect that is within the scope of the power is, to the extent it is confirmed, taken to be as good for all purposes and between all persons as if, at the time when the order took effect, the principal were of full capacity and had in due form confirmed the power of attorney to the</p>					

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
	<p>extent of the order of confirmation.</p> <p><b>Division 4</b> <b>Review of enduring powers of attorney and other powers</b></p> <p><b>Reviewable powers of attorney</b></p> <p>33.—(1) A power of attorney is a reviewable power of attorney for the purposes of an application under this Division if the review tribunal to which the application is to be made has jurisdiction to deal with the application as provided by this section.</p> <p>(2) Both the Guardianship Tribunal and the Supreme Court have jurisdiction to deal with an application under this Division in respect of an enduring power of attorney.</p> <p>(3) The Supreme Court (but not the Guardianship Tribunal) also has jurisdiction to deal with an application under this Division in respect of any other power of attorney given by a principal who is</p>					

<p><b>UK</b></p>	<p><b>New South Wales</b></p>	<p><b>Tasmania</b></p>	<p><b>British Columbia</b></p>	<p><b>Hong Kong</b></p>	<p><b>Malaysia</b></p>	<p><b>Singapore</b></p>
	<p>incommunicate for the time being.                  (4) To remove any doubt, references in this Division to a reviewable power of attorney extend to a document purporting to be a reviewable power of attorney and to the making of a power of attorney extend to the purported making of a power of attorney.  <b>Referral of application to different review tribunal</b>                  34.—(1) Whether or not on its own initiative, the Supreme Court may refer an application made to it under this Division in respect of an enduring power of attorney to the Guardianship Tribunal and the Guardianship Tribunal may refer such an application made to it to the Supreme Court.                  (2) Without limiting the matters that a review tribunal may take into account in deciding whether or not to refer such an application, the review tribunal may take into account any one or more of the following matters:</p>					

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
	<p>(a) whether the application relates to the effect of the enduring power of attorney on third parties,</p> <p>(b) whether the application is likely to raise for consideration complex or novel legal issues that the Supreme Court is better suited to determine,</p> <p>(c) any other matter it considers relevant.</p> <p><b>Who are interested persons and parties in relation to applications</b></p> <p><b>35.—(1) Interested persons who may make applications</b></p> <p>Each of the following persons is an <i>interested person</i> in relation to the making of applications under this Division in respect of a reviewable power of attorney:</p> <p>(a) an attorney,</p> <p>(b) the principal,</p> <p>(c) any person who is:</p> <p>(i) a guardian of the principal</p>					

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
	<p>(whether under the Guardianship Act 1987 or any other Act or law), or</p> <p>(ii) an enduring guardian of the principal under the Guardianship Act 1987,</p> <p>(d) any other person who, in the opinion of the review tribunal, has a proper interest in the proceedings or a genuine concern for the welfare of the principal.</p> <p>(2) <b>Parties to proceedings in respect of an application</b> Each of the following persons is a party to an application in respect of a reviewable power of attorney:</p> <p>(a) the applicant,</p> <p>(b) each attorney under the power (if the attorney is not the applicant),</p> <p>(c) the principal (if the principal is not the applicant),</p>					

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
	<p>(d) any other person that the review tribunal concerned has joined as a party under subsection (3).</p> <p><b>(3) Joinder of parties</b> A review tribunal may, on its own initiative or on the application of an interested person, decide to join, as a party to any proceedings before the tribunal under this Division, any person who, in the opinion of the tribunal, should be a party to the proceedings (whether because of the person's concern for the welfare of the principal or for any other reason).</p> <p>(4) [Repealed].</p> <p><b>(5) Applicant to be notified of joinder</b> If a review tribunal joins a person as a party to any proceedings, the tribunal must, as soon as practicable, notify the applicant (or cause the applicant to be notified) accordingly.</p> <p><b>Interested persons may apply for review</b></p> <p>36.—(1) Tribunal may review making or</p>					

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
	<p><b>operation and effect of power</b>                      A review tribunal may, on the application of an interested person, decide to review the making or the operation and effect of a reviewable power of attorney or not to carry out such a review.</p> <p>(2) As a consequence of reviewing the making or operation and effect of a reviewable power of attorney, a review tribunal may decide whether or not to make an order under this section.</p> <p>(3) <b>Orders relating to making of power of attorney</b>                      A review tribunal may make either or both of the following orders with respect to the making of a power of attorney:</p> <p>(a) an order declaring that the principal did or did not have mental capacity to make a valid power of attorney,</p> <p>(b) an order declaring that the power of attorney is invalid (either in whole or in part) if the tribunal is satisfied:</p>					



UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
	<p>(i) the principal did not have the capacity necessary to make it, or</p> <p>(ii) the power of attorney did not comply with the other requirements of this Act applicable to it, or</p> <p>(iii) the power of attorney is invalid for any other reason, for example, the principal was induced to make it by dishonesty or undue influence.</p> <p><b>(4) Orders relating to operation and effect of power</b>  A review tribunal may, if satisfied that it would be in the best interests of the principal to do so or that it would better reflect the wishes of the principal, make any one or more of the following orders relating to the operation and effect of a power of attorney:</p>					

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
	<p>(a) an order varying a term of, or a power conferred by, the power of attorney,</p> <p>(b) an order removing a person from office as an attorney,</p> <p>(c) an order appointing a substitute attorney to replace an attorney who has been removed from office by a review tribunal or who otherwise vacates the office,</p> <p>(d) an order reinstating a power of attorney that has lapsed by reason of any vacancy in the office of an attorney and appointing a substitute attorney to replace the attorney who vacated office,</p> <p>(e) an order directing or requiring any one or more of the following:</p> <p>(i) that an attorney furnish accounts and other information to</p>					

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
	<p>the tribunal or to a person nominated by the tribunal,</p> <p>(ii) that an attorney lodge with the tribunal a copy of all records and accounts kept by the attorney of dealings and transactions made by the attorney under the power,</p> <p>(iii) that those records and accounts be audited by an auditor appointed by the tribunal and that a copy of the report of the auditor be furnished to the tribunal,</p> <p>(iv) that the attorney submit a plan of financial management to the tribunal for approval,</p> <p>(f) an order revoking all or part of the power of attorney,</p>					

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
	<p>(g) such other orders as the review tribunal thinks fit.</p> <p><b>(5) Orders relating to mental capacity of principal</b>                      A review tribunal may make an order relating to the operation and effect of a power of attorney declaring that the principal lacked or lacks capacity because of mental incapacity at a specified time or during a specified period or for the time being. An enduring power of attorney can not be lawfully revoked by the principal while the principal is declared to be incapable by such an order.</p> <p><b>(6) Effect of order declaring mental incapacity for the time being</b>                      If a review tribunal makes an order under this section declaring that a principal under a reviewable power of attorney lacks capacity through mental incapacity for the time being, the principal is to be taken, for the purposes of the operation of the power of attorney, to lack</p>					

<p><b>UK</b></p>	<p><b>New South Wales</b></p>	<p><b>Tasmania</b></p>	<p><b>British Columbia</b></p>	<p><b>Hong Kong</b></p>	<p><b>Malaysia</b></p>	<p><b>Singapore</b></p>
	<p>such capacity for such period (if any) specified in the order or until further order of the tribunal.</p> <p><b>(7) Orders may be subject to terms and conditions</b> An order made under this section may be made subject to such terms and conditions as the review tribunal thinks fit.</p> <p><b>(8) Further orders relating to accounts and information</b> If a review tribunal makes an order under this section directing an attorney to furnish accounts or other information, the tribunal may decide to make further orders for:</p> <p>(a) limiting the disclosure of accounts or other information by the attorney, and</p> <p>(b) inquiry and report on the conduct of the attorney.</p> <p><b>(9) Order reinstating lapsed power of attorney may have retrospective operation</b> If a review tribunal makes an order under this</p>					

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
	<p>section reinstating a power of attorney that has lapsed by reason of a vacancy in the office of an attorney, the order may also direct that it has effect from the time at which the power of attorney originally lapsed.</p> <p><b>(10) Effect of order removing or appointing attorney or altering power</b> The removal or appointment of an attorney, or the alteration or revocation of a power of attorney, under this section has effect as if:</p> <p>(a) it were done in due form by the principal, and</p> <p>(b) the principal were of full capacity and were, to the extent necessary, authorised to do the thing in question by the instrument creating the power.</p> <p><b>(11) Review tribunal may exercise functions despite instrument</b> A review tribunal may exercise a function under this section despite anything to the contrary</p>					

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
	<p>in the instrument creating the power.</p> <p><b>(12) Section does not affect irrevocable powers of attorney</b> This section has effect subject to the provisions of Part 3 (Irrevocable powers of attorney).</p> <p><b>Review tribunal may treat certain applications for review of power of attorney as application for management order</b></p> <p>37.—(1) If, on a review of the making or operation and effect of a reviewable power of attorney under section 36, the Guardianship Tribunal decides not to make an order under that section in respect of the power of attorney, it may (if it considers it appropriate in all the circumstances to do so) decide to treat the application for the review as an application for a financial management order under Part 3A (Financial management) of the Guardianship Act 1987.</p> <p>(2) If such a decision is made, the application is</p>					

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
	<p>taken to be an application for such a financial management order duly made in respect of the principal under that power.</p> <p>(3) If, on a review of the making or operation and effect of a reviewable power of attorney under section 36, the Supreme Court decides not to make an order under that section in respect of the power of attorney, it may (if it considers it appropriate in all the circumstances to do so) proceed instead as if an application for a declaration and order under section 13 (Declaration and order where person incapable of managing affairs) of the Protected Estates Act 1983 had been duly made in respect of the principal under that power.</p> <p><b>Advice or directions concerning reviewable powers of attorney</b></p> <p>38.—(1) An attorney under a reviewable power of attorney may apply for advice or direction by a review tribunal on any matter</p>					



UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
	<p>relating to the scope of the attorney's appointment or the exercise of any function by the attorney under a reviewable power of attorney.</p> <p>(2) In determining any such application, a review tribunal may decide to:</p> <p>(a) approve or disapprove of any act proposed to be done by the attorney, or</p> <p>(b) give such advice or direction as it considers appropriate, or</p> <p>(c) vary the effect of the enduring power of attorney or make any other order it could make in an application under section 36.</p> <p>(3) No proceedings lie against an attorney under a reviewable power of attorney for or on account of any act, matter or thing done or omitted to be done by the attorney in good faith and in accordance with any approval, advice or direction given under this section.</p>					

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
	<p><b>Division 7</b>  <b>Procedure in relation to incommunicate principals</b></p> <p><b>Procedure where principal incommunicate</b></p> <p>42.—(1) If the principal under a power of attorney is incommunicate:</p> <p>(a) proceedings under this Part by the principal:</p> <p>(i) may be commenced and carried on as prescribed by rules of court, or</p> <p>(ii) subject to rules of court, may be commenced and carried on as if the principal were mentally incapacitated, and</p> <p>(b) subject to rules of court, all persons are, in relation to the proceedings, to be as nearly as may be in the like position in law as if</p>					

UK	New South Wales	Tasmania	British Columbia	Hong Kong	Malaysia	Singapore
	<p>the principal were mentally incapacitated.</p> <p>(2) Subsection (1) does not limit the rule-making powers conferred by the Supreme Court Act 1970.</p> <p>(3) A reference to rules of court in subsection (1) includes a reference to rules of the Guardianship Tribunal made under section 75 of the Guardianship Act 1987 in relation to proceedings in that Tribunal brought under this Part.</p>					

1 “Property” is defined in s 2 CLPA as follows:

‘Property’ includes real and personal property and any estate in any property, real or personal, and any debt and any thing in action, and any other right or interest in the nature of property, whether in possession or not.

2 “Attorney” is defined in s 3(1) as follows:

‘Attorney’ means a person to whom a power of attorney is given.

3 “Donor” is defined in s 3(1) as follows:

‘Donor’ means a person who grants a power of attorney.

4 Forms 3 and 4 relate to enduring powers of attorney.

5 “Board” is defined in s 3(1) as follows:

‘Board’ means the Guardianship and Administration Board.

6 “Register” is defined in s 3(1) as follows:

- 
- 7 'Register' means the register of powers of attorney kept under section 4.  
'Land Administrator' is defined in s 2 as follows:  
'Land Administrator' means a Land Administrator appointed under the National Land Code [Act No. 56 of 1965], or an equivalent officer, by whatever name called, in a State appointed under the law relating to land in force in that State.
- 8 "Registrar" is defined in s 2 as the Registrar of the High Court.
- 9 "Conveyance" is defined in s 3(1) as follows:  
'Conveyance' includes any assignment, appointment, lease, settlement or other assurance by deed of any property.
- 10 "Deed" is defined in s 3(1) as follows:  
'Deed', in relation to land under the provisions of the Real Property Act 1900, includes a dealing having the effect of a deed under that Act.
- 11 "Dealing" is defined in s 3(1) as follows:  
'Dealing' has the same meaning as it has in the Real Property Act 1900.
- 12 "Recorder" is defined in s 3(1) as follows:  
'Recorder' means the Recorder of Titles.
- 13 "Transparency" is defined in s 3(1) as follows:  
'Transparency', in relation to a document that is a power of attorney, means –  
(a) a developed negative or positive photograph of that document (in this definition referred to as an original photograph) made on a transparent base by means of light reflected from, or transmitted through, the document; or  
(b) a copy of an original photograph made by the use of photosensitive material on a transparent base placed in surface contact with the original photograph; or  
(c) any one of a series of copies of an original photograph, the first of the series being made by the use of photosensitive material on a transparent base placed in surface contact with a copy referred to in paragraph (b), and each succeeding copy in the series being made in the same manner from any preceding copy in the series.
- 14 "Machine copy" is defined in s 3(1) as follows:  
'Machine copy', in relation to a document that is a power of attorney, means a copy of the document made by –  
(a) a machine in which, or a process by which, a latent image of the contents of the document is produced from surface contact with the document or by the use of photosensitive material other than transparent photographic film; or  
(b) the electrostatic process known as Xerography or any similar process.
- 15 "Senior Assistant Registrar" is defined in s 2 as "a Senior Assistant Registrar or Assistant Registrar of the High Court".  
"Instrument" is defined in s 3(1) as follows:  
'Instrument' includes a deed.

- 
- 16 “Principal” is defined in s 3(1) as follows:
- 17 ‘Principal’, in relation to a power of attorney, means the person giving the power.
- 18 “Certified copy” is defined in s 3(1) as follows:
- 19 ‘Certified copy’, in the case of a power of attorney or print-out, means a copy of that power of attorney as registered or print-out that –
- 20 (a) is certified by the Recorder to be a copy of the power of attorney or print-out; or
- 21 (b) in the case of a copy created by a facsimile or electronic transmission process, has recorded on it by that process an indication that the transmission creating the copy was initiated in an office of the Recorder and a record of the time and date of the transmission.
- 22 “Print-out” is defined in s 3(1) as follows:
- 23 ‘Print-out’, in the case of a computer, means the output of that computer produced in a form that can be understood by sight.
- 24 “Computer” is defined in s 3(1) as follows:
- 25 ‘Computer’ means any device for storing or processing information.
- 26 See Annex F to this Report.
- 27 See Annex F to this Report.
- 28 “Exercise a function” and “function” are defined in s 3(1) as follows:
- 29 ‘Exercise a function’ includes perform a duty.
- 30 ‘Function’ includes a power, authority or duty.
- 31 See Annex F to this Report.
- 32 “Third party” is defined in s 3(1) of the Act as follows:
- 33 ‘Third party’, in relation to a power of attorney, means a person other than the principal or an attorney on which a power is conferred by the power of attorney.
- 34 See Annex F to this Report.
- 35 See Annex F to this Report.
- 36 See Annex F to this Report.
- 37 See Annex F to this Report.
- 38 Section 205(1)(xxi) of the Law of Property Act 1925 states:
- 39 ‘Purchaser’ means ‘purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property except that in Part I of this Act [the Law of Property Act] and elsewhere where so expressly provided “purchaser” only means a person who acquires an interest in or charge on property for money or money’s worth; and in reference to a legal estate includes a chargee by way of legal mortgage; and where the context so requires “purchaser” includes an intending purchaser; “purchase” has a meaning corresponding with that of “purchaser”; and “valuable consideration” includes marriage [, and formation of a civil partnership,] but does not include a nominal consideration in money;’.

*Note.* The words in [ ] are inserted by Civil Partnership Act 2004 (c 33), s 261(1), Sched 27 para 7.

28 “Attorney” is defined in s 3(1) as follows:

‘Attorney’, in relation to a power of attorney, means a person to whom the power is given.

29 See further s 5 on vacancy in office of attorney. Section 5 states:

**Vacancy in office of attorney**

For the purposes of this Act, there is a vacancy in the office of an attorney if:

- (a) the appointment of the attorney is revoked, or
- (b) the attorney renounces the power, or
- (c) the attorney dies, or
- (d) the attorney becomes bankrupt, or
- (e) where the attorney is a corporation, the corporation is dissolved, or
- (f) the attorney, by reason of any physical or mental incapacity, ceases to have the capacity to continue to act as an attorney, or
- (g) in such other circumstances as may be prescribed by the regulations for the purposes of this paragraph.

30 Section 3(3) explains the term “suspended power of attorney”. Section 3(3) states:

A reference in this Act to a suspended power of attorney is a reference to a power of attorney that is:

- (a) suspended or restricted in operation by reason of mental incapacity of the principal occurring after the execution of the instrument creating the power, or
- (b) suspended by operation of section 76 of the Protected Estates Act 1983.

31 “Third party” is defined in s 3(1) of the Act as follows:

‘Third party’, in relation to a power of attorney, means a person other than the principal or an attorney on which a power is conferred by the power of attorney.

32 “Knowledge” is defined in s 1 as follows:

‘Knowledge’ includes knowledge of circumstances that would put a reasonable person on inquiry.

33 “Agent” is defined in s 1 as follows:

‘Agent’ includes an attorney acting under a power of attorney.

34 “Valuable consideration” is defined in s 3(1) as follows:

‘Valuable consideration’ includes marriage but does not include a nominal consideration, even if it has some value.

35 “Bankruptcy” is defined in s 3(1) as follows:

‘Bankruptcy’ means any act or proceeding in law having effects or results similar to those of bankruptcy, and includes the winding up of a company under the Corporations Act 2001 of the Commonwealth.

36 See also s 3(2), which states:

A power of attorney does not become a different power of attorney if an attorney appointed by the power is lawfully replaced by a different attorney, the exercise of a power conferred by it is lawfully delegated or a sub-attorney is lawfully appointed to exercise a power under it.

37 “Guardianship Tribunal” is defined in s 3(1) as follows:

‘Guardianship Tribunal’ means the Guardianship Tribunal constituted under the Guardianship Act 1987.

38 Section 4 defines when a person is incommunicate. Section 4 states:

- (1) For the purposes of this Act, a person is *incommunicate* if:
  - (a) the person suffers from any physical or mental incapacity (whether of a temporary or permanent nature) that makes the person unable:
    - (i) to understand communications respecting the person’s property or affairs; or
    - (ii) to express the person’s intentions respecting the person’s property or affairs; or
  - (b) the person is unable to receive communications respecting the person’s property or affairs because the person cannot be located or contacted.
- (2) Without limiting subsection (1)(a), a person may be incommunicate even if the incapacity concerned is induced by any drug or by medical or other treatment.





**ANNEX D:**

**COMPARATIVE TABLE OF  
THE UK STATUTORY PROVISIONS ON  
IRREVOCABLE POWERS OF ATTORNEY**

## UK STATUTORY PROVISIONS ON IRREVOCABLE POWERS OF ATTORNEY

<b>Law of Property Act 1925</b>  (relevant provisions were repealed on 1 October 1971)	<b>Powers of Attorney Act 1971</b>  (wef 1 October 1971)
<p><b>Effect of irrevocable power of attorney for value</b></p> <p><b>126.—</b>(1) If a power of attorney given for valuable consideration is in the instrument creating the power expressed to be irrevocable, then, in favour of a purchaser, —</p> <ul style="list-style-type: none"> <li>(i) The power shall not be revoked at any time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, disability or bankruptcy of the donor of the power; and</li> <li>(ii) Any act done at any time by the donee of the power in pursuance of the power shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, disability or bankruptcy of the donor of the power, had not been done or happened; and</li> <li>(iii) Neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice of anything done by the donor of the power without the concurrence of the donee of the power, or of the death, disability or bankruptcy of the donor of the power.</li> </ul> <p>(2) This section applies to powers of attorney created by instruments executed after the thirty-first day of December, eighteen hundred and eighty-two.</p> <p><b>Effect of power of attorney irrevocable for a fixed time</b></p> <p><b>127.—</b>(1) If a power of attorney, whether given for valuable consideration or not, is in the instrument creating the power expressed to be irrevocable for a fixed time therein specified, not</p>	<p><b>Powers of attorney given as security</b></p> <p><b>4.—</b>(1) Where a power of attorney is expressed to be irrevocable and is given to secure —</p> <ul style="list-style-type: none"> <li>(a) a proprietary interest of the donee of the power; or</li> <li>(b) the performance of an obligation owed to the donee,</li> </ul> <p>then, so long as the donee has that interest or the obligation remains undischarged, the power shall not be revoked —</p> <ul style="list-style-type: none"> <li>(i) by the donor without the consent of the donee; or</li> <li>(ii) by the death, incapacity or bankruptcy of the donor or, if the donor is a body corporate, by its winding up or dissolution.</li> </ul> <p>(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.</p> <p>(3) This section applies to powers of attorney whenever created.</p>

<p style="text-align: center;"><b>Law of Property Act 1925</b></p> <p style="text-align: center;">(relevant provisions were repealed on 1 October 1971)</p>	<p style="text-align: center;"><b>Powers of Attorney Act 1971</b></p> <p style="text-align: center;">(wef 1 October 1971)</p>
<p>exceeding one year from the date of the instrument, then, in favour of a purchaser, —</p> <p>(i) The power shall not be revoked for and during that fixed time either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, disability or bankruptcy of the donor of the power; and</p> <p>(ii) Any act done within that fixed time by the donee of the power in pursuance of the power shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, disability or bankruptcy of the donor of the power, had not been done or happened; and</p> <p>(iii) Neither the donee of the power, nor the purchaser, shall at any time be prejudicially affected by notice either during or after that fixed time of anything done by the donor of the power during that fixed time without the concurrence of the donee of the power, or of the death, disability or bankruptcy of the donor of the power, within that fixed time.</p> <p>(2) This section applies to powers of attorney created by instruments executed after the thirty-first day of December, eighteen hundred and eighty-two.</p> <p><b>Devolution of power of attorney</b></p> <p><b>128.</b>—(1) A power of attorney given for valuable consideration may be given, and shall be deemed to have been always capable of being given, to a purchaser of property or any interest therein, and to the persons deriving title under him thereto, and those persons shall be the duly constituted attorneys for all the purposes of the power, but without prejudice to any right to appoint substitutes given by the power.</p> <p>(2) This section applies to powers of attorney created by instruments executed after the thirty-</p>	

<p style="text-align: center;"><b>Law of Property Act 1925</b></p> <p style="text-align: center;">(relevant provisions were repealed on 1 October 1971)</p>	<p style="text-align: center;"><b>Powers of Attorney Act 1971</b></p> <p style="text-align: center;">(wef 1 October 1971)</p>
<p>first day of December, eighteen hundred and eighty-two.</p> <p>(3) This section does not authorise the persons deriving title under the donee of the power to execute, on behalf of the registered proprietor, an instrument relating to registered land to which effect is to be given on the register, unless the power is protected by a caution or other entry on the register.</p>	

**ANNEX E:**

**COMPARATIVE TABLE OF  
THE NEW SOUTH WALES  
STATUTORY PROVISIONS ON  
IRREVOCABLE POWERS OF ATTORNEY**

## NEW SOUTH WALES STATUTORY PROVISIONS ON IRREVOCABLE POWERS OF ATTORNEY

Conveyancing Act 1919 (prior to 1983 amendments)	Conveyancing Act 1919 (post 1983 amendments)	Powers of Attorney Act 2003
<p><b>161.—(1)</b> Where a power of attorney given for valuable consideration (whether executed in or out of New South Wales) is in the instrument creating the power expressed to be irrevocable, then, in favour of a purchaser,-</p> <p>(a) the power shall not be revoked at any time, either by anything done by the donor of the power without the concurrence of the donee, or by the death, mental disability or bankruptcy of the donor; and</p> <p>(b) any act done at any time by the donee of the power in pursuance of the power shall be as valid as if anything done by the donor without the concurrence of the donee, or the death, mental disability or bankruptcy of the donor, had not been done or had not happened; and</p> <p>(c) neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice of anything done by the donor without the concurrence of the donee, or of the death, mental disability or</p>	<p><b>160 Irrevocable powers</b></p> <p>(1) Where a power of attorney is, in the instrument creating the power, expressed to be irrevocable and is, or in the instrument creating the power is expressed to be, given for valuable consideration, the power is not, except to the extent (if any) that the instrument otherwise provides, revoked or otherwise terminated by, and remains effective notwithstanding:</p> <p>(a) anything done by the principal without the concurrence of the attorney,</p> <p>(b) bankruptcy of the principal,</p> <p>(c) mental incapacity of the principal,</p> <p>(d) the principal becoming a patient, a protected person or an incapable person within the meaning of the Mental Health Act 1958, or any other event happening whereby the property or affairs of the principal becomes or become subject to care, management, collection, administration, charge or control under that Act,</p> <p>(e) death of the principal,</p> <p>(f) if the principal is a corporation,</p>	<p><b>15 Irrevocable powers of attorney</b></p> <p>An instrument that creates a power of attorney creates an <i>irrevocable power of attorney</i> for the purposes of this Act if:</p> <p>(a) the instrument is expressed to be irrevocable, and</p> <p>(b) the instrument is given for valuable consideration or is expressed to be given for valuable consideration.</p> <p><b>16 Effect of irrevocable powers of attorney</b></p> <p>(1) The power conferred by an irrevocable power of attorney is not revoked or otherwise terminated by, and remains effective despite, the occurrence of any of the following:</p> <p>(a) anything done by the principal without the concurrence of the attorney,</p> <p>(b) the bankruptcy of the principal,</p> <p>(c) the mental incapacity of the principal,</p> <p>(d) the principal becoming a person who is a temporary patient, a continued treatment patient or a forensic patient within the meaning of the Mental Health Act 1990, or a protected person</p>

<p align="center"><b>Conveyancing Act 1919</b></p> <p align="center">(prior to 1983 amendments)</p>	<p align="center"><b>Conveyancing Act 1919</b></p> <p align="center">(post 1983 amendments)</p>	<p align="center"><b>Powers of Attorney Act 2003</b></p>
<p align="center">bankruptcy of the donor.</p> <p>(2) This section applies only to powers of attorney created by instruments executed after the commencement of this Act.</p> <p><b>162.</b>—(1) Where a power of attorney (whether executed in or out of New South Wales, and whether given for valuable consideration or not) is in the instrument creating the power expressed to be irrevocable for a fixed time therein specified, not exceeding two years from the date of the instrument, then, in favour of a purchaser,</p> <p>(a) the power shall not be revoked for and during that fixed time, either by anything done by the donor of the power without the concurrence of the donee, or by the death, mental disability or bankruptcy of the donor; and</p> <p>(b) any act done within that fixed time by the donee of the power in pursuance of the power shall be as valid as if anything done by the donor without the concurrence of the donee, or the death, mental disability or bankruptcy of the donor had not been done or had not happened; and</p> <p>(c) neither the donee of the power nor the purchaser shall at any time be</p>	<p align="center">dissolution of the corporation.</p> <p>(2) Where the objects of a power of attorney to which this section applies have been carried out, or have become incapable of being carried out, or a power of attorney to which this section applies is otherwise exhausted, the Court may order that the power of attorney terminate and may order that the instrument creating the power be delivered up for cancellation.</p> <p>(3) This section does not apply to a power of attorney created by an instrument executed before the commencement of the Conveyancing (Powers of Attorney) Amendment Act 1983.</p>	<p align="center">within the meaning of the Protected Estates Act 1983,</p> <p>(d1) the principal becoming a person who is a protected missing person within the meaning of the Protected Estates Act 1983,</p> <p>(e) the death of the principal,</p> <p>(f) if the principal is a corporation, the dissolution of the corporation.</p> <p>(2) Subsection (1) has effect except to the extent that the instrument creating the irrevocable power of attorney provides otherwise.</p> <p><i>Note.</i> Division 2 of Part 5 enables the Supreme Court to order the termination of an irrevocable power of attorney in certain circumstances.</p>

<p align="center"><b>Conveyancing Act 1919</b> (prior to 1983 amendments)</p>	<p align="center"><b>Conveyancing Act 1919</b> (post 1983 amendments)</p>	<p align="center"><b>Powers of Attorney Act 2003</b></p>
<p>prejudicially affected by notice, either during or after that fixed time, of anything done by the donor during that fixed time without the concurrence of the donee, or of the death, mental disability or bankruptcy of the donor within that fixed time.</p> <p>(2) This section applies to powers of attorney created by instruments executed before or after the commencement of this Act.</p> <p><b>162A.</b> Any act done, whether before or after the commencement of the Conveyancing (Amendment) Act, 1930, in professed exercise of a power mentioned in either section one hundred and sixty-one or section one hundred and sixty-two of this Act, and within the time, if any, fixed by the power, shall, in favour of a purchaser without notice of the revocation of the power with the concurrence of the donee thereof, be as valid as if the power had not been so revoked.</p>		



**ANNEX F:**

**STATUTORY FORMS FOR  
POWER OF ATTORNEY  
PRESCRIBED IN  
THE UK, NEW SOUTH WALES, TASMANIA,  
BRITISH COLUMBIA AND HONG KONG**

**UNITED KINGDOM**

*Powers of Attorney Act 1971*

SCHEDULE 1

Section 10

FORM OF GENERAL POWER OF ATTORNEY FOR PURPOSES OF

SECTION 10

This General Power of Attorney is made this ..... day of .....  
19..... by AB of .....

I appoint CD of ..... [or CD of  
..... and EF of  
..... jointly or jointly and  
severally] to be my attorney[s] in accordance with section 10 of the Powers of Attorney  
Act 1971.

IN WITNESS etc.,

## NEW SOUTH WALES

### *Powers of Attorney Act 2003*

#### Schedule 2 Form for prescribed power of attorney

(Section 8)

#### General power of attorney

##### Part 1 General

This power of attorney is made on the ..... day of ..... 20.....

by ..... (the *principal*)

*[name]*

of .....

*[address]*

1 I appoint .....

*[name(s)]*

of .....

*[address(es)]*

to be my attorney(s). My attorney may exercise the authority conferred on my attorney by Part 2 of the *Powers of Attorney Act 2003* to do on my behalf anything I may lawfully authorise an attorney to do. My attorney's authority is subject to any additional details specified in Part 2 of this document.

\*2 I give this power of attorney with the intention that it will continue to be effective if I lack capacity through loss of mental capacity after its execution.

*[\*You can cross out clause 2 if you do not want it to apply. If you want clause 2 to apply, then you need to see a solicitor, barrister, registrar of a Local Court or other prescribed witness referred to in section 19 of the Powers of Attorney Act 2003 who must complete the certificate that is required under that section.]*

\*3 This power of attorney operates:

\* immediately

\* when my attorney accepts (or as each of my attorneys accept) the appointment

- \* on and from ..... up to and including  
.....  
*[specify dates]*
- \* when my attorney considers that I need assistance managing my affairs
- \* other .....

*[\*If you include clause 2 above, the power of attorney will not operate to confer any authority on an attorney until the attorney accepts the power of attorney by signing this document.]*

*[\*Cross out the options that you do not want.]*

If no option is selected or the options chosen are unclear or inconsistent, I intend that the power of attorney will operate immediately or, if clause 2 is not crossed out, when my attorney accepts, or as each of my attorneys accept, the appointment.

4 If I appoint more than one attorney, then I appoint them jointly and severally.

*[Cross out “and severally” if you want your power of attorney to operate only when both attorneys act together and are both living. You should get legal advice on changing this clause.]*

## **Part 2 Additional powers and restrictions**

\*5 I authorise my attorney to give reasonable gifts as provided by section 11(2) of the *Powers of Attorney Act 2003*.

*[\*Cross out if you do not want to confer this authority.]*

\*6 I authorise my attorney to confer benefits on the attorney to meet the attorney’s reasonable living and medical expenses as provided by section 12(2) of the *Powers of Attorney Act 2003*.

*[\*Cross out if you do not want to confer this authority.]*

\*7 I authorise my attorney to confer benefits on *[insert name(s) and address(es) of each third party]* to meet their reasonable living and medical expenses as provided by section 13(2) of the *Powers of Attorney Act 2003*.

*[\*Cross out if you do not want to confer this authority.]*

\*8 This power of attorney is subject to the following conditions and limitations:

.....  
*[specify conditions and/or limitations]*

*[\*Cross out if you do not want to add conditions or limitations.]*

Signed, sealed and delivered by .....

*[principal's signature]*

.....

*[witness's signature]*

in the presence of

.....

*[witness's name]*

.....

*[witness's address]*

*[The following certificate is to be completed only if clause 2 is retained and you want to create an enduring power of attorney.]*

**Certificate under section 19 of the Powers of Attorney Act 2003**

I .....  
*[name]*

of .....  
*[address]*

certify the following:

- 1 I explained the effect of this power of attorney to the principal before it was signed.
- 2 The principal appeared to understand the effect of this power of attorney.
- 3 I am a prescribed witness.
- 4 I am not an attorney under this power of attorney.
- 5 I have witnessed the signature of this power of attorney by the principal.

dated .....

.....

- \*solicitor/barrister,
- \*registrar of a Local Court,
- \*licensed conveyancer,
- \*Public Trustee employee,
- \*trustee company employee,
- \*other (specify.....)

*[\*Delete inappropriate categories.]*

### **Acceptance by attorney**

*[To be used for enduring powers of attorney only. It must be signed before the power of attorney can be used by the attorney.]*

I accept my appointment as an attorney under this enduring power of attorney.

dated .....

.....

*[attorney's signature]*

### **Important information for principals and attorneys**

- (1) A power of attorney is an important and powerful legal document. You should get legal advice before you sign it.

A power of attorney gives the attorney the authority to buy and sell real estate, shares and other assets for the principal, to operate the principal's bank accounts, to spend the principal's money on behalf of the principal and to exercise many other powers. It is not to be used after the principal dies.

- (2) A power of attorney cannot be used for health or lifestyle decisions. The principal should appoint an enduring guardian under the *Guardianship Act 1987* if the principal wants a particular person to make these decisions. For further information, contact the Guardianship Tribunal (toll free 1800 463 928 or [www.gt.nsw.gov.au](http://www.gt.nsw.gov.au)) or the Public Guardian ((02) 9265 3184 or 1800 451 510 or [www.lawlink.nsw.gov.au/opg](http://www.lawlink.nsw.gov.au/opg)).

- (3) Part 2 of the power of attorney will permit the attorney to use the principal's money and assets for the attorney or anyone else as provided by clauses 5, 6 and 7. If the principal does not want this to happen, then the principal should delete the powers from Part 2 that the principal does not want to give the attorney.

- (4) An attorney must always act in the best interests of the principal. Unless the attorney is expressly authorised, the attorney cannot gain a benefit from being an attorney.

- (5) This power of attorney is for use in New South Wales only. If you need a power of attorney for interstate or overseas, you may need to make a power of attorney under their laws. The laws of some other States and Territories in Australia may give effect to this power of attorney. However, you should not assume this will be the case. You should confirm whether the laws of the State or Territory concerned will in fact recognise this power of attorney.
- (6) An attorney should keep the attorney's own money and property separate from the principal's money and property, unless they are joint owners, or operate joint bank accounts. An attorney should keep reasonable accounts and records about the principal's money and property.
- (7) If the attorney is signing documents that affect real estate, the power of attorney must be registered at Land and Property Information NSW.

For information on powers of attorney, the attorney's duties and registration, contact Land and Property Information NSW ((02) 9228 6666 for a fact sheet or [www.lpi.nsw.gov.au](http://www.lpi.nsw.gov.au)) or a solicitor, a trustee company or the Public Trustee ([www.pt.nsw.gov.au](http://www.pt.nsw.gov.au)).

### **Schedule 3 Prescribed expressions and authorisations for prescribed powers of attorney**

(Sections 11(2), 12(2) and 13(2))

#### **1 Authority to give gifts**

(1) The prescribed expression for the purposes of section 11(2) is as follows:

I authorise my attorney to give reasonable gifts as provided by section 11(2) of the *Powers of Attorney Act 2003*.

(2) The prescribed expression authorises an attorney to give a gift only if:

(a) the gift is:

(i) to a relative or close friend of the principal, and

(ii) of a seasonal nature or because of a special event (including, for example, a birth or marriage), or

(b) the gift is a donation of the nature that the principal made when the principal had capacity or the principal might reasonably be expected to make,

and the gift's value is not more than what is reasonable having regard to all the circumstances and, in particular, the principal's financial circumstances and the size of the principal's estate.

(3) In this clause:

**close friend** of a principal means another individual who has a close personal relationship with the principal and a personal interest in the principal's welfare.

**relative** of a principal means:

(a) a mother, father, wife, husband, daughter, son, step-daughter, step-son, sister, brother, half-sister, half-brother or grandchild of the principal, or

(b) if the principal is a party to a domestic relationship within the meaning of the *Property (Relationships) Act 1984*, any person who is a relative, of the kind mentioned in paragraph (a), of either party to the relationship.

#### **2 Authority to confer benefits on attorney**

(1) The prescribed expression for the purposes of section 12(2) is as follows:



I authorise my attorney to confer benefits on the attorney to meet the attorney's reasonable living and medical expenses as provided by section 12(2) of the *Powers of Attorney Act 2003*.

- (2) The prescribed expression authorises an attorney to confer a benefit on the attorney only if:
- (a) the benefit meets (whether in whole or in part) any expenses incurred (or to be incurred) by the attorney in respect of any of the following:
    - (i) housing,
    - (ii) food,
    - (iii) education,
    - (iv) transportation,
    - (v) medical care and medication, and
  - (b) the benefit is not more than what is reasonable having regard to all the circumstances and, in particular, the principal's financial circumstances and the size of the principal's estate.

### **3 Authority to confer benefits on third parties**

- (1) The prescribed expression for the purposes of section 13(2) is as follows:

I authorise my attorney to confer benefits on *[insert name(s) and address(es) of each third party]* to meet their reasonable living and medical expenses as provided by section 13(2) of the *Powers of Attorney Act 2003*.

- (2) The prescribed expression authorises an attorney to confer a benefit on a named third party only if:
- (a) the benefit meets (whether in whole or in part) any expenses incurred (or to be incurred) by the third party in respect of any of the following:
    - (i) housing,
    - (ii) food,
    - (iii) education,
    - (iv) transportation,
    - (v) medical care and medication, and

- (b) the benefit is not more than what is reasonable having regard to all the circumstances and, in particular, the principal's financial circumstances and the size of the principal's estate.

**TASMANIA**

*Powers of Attorney Act 2000*

**Schedule 1 – Forms**

Section 3(2)

Form 1

Section 18(1)(b)

**PARTICULAR POWER OF ATTORNEY**

**THIS PARTICULAR POWER OF ATTORNEY** is made on the ..... day of ..... by ..... of ..... under the *Powers of Attorney Act 2000*.

1. **I APPOINT** ..... of .....  
.....  
(*and where appropriate: jointly/jointly and severally*) to be my attorney(s).

2. **I AUTHORISE** my attorney(s) to do on my behalf any of the following things:  
  
(*Here set out the powers to be given*)

**SIGNED BY**

.....  
(*Donor' signature*)

.....  
(*Signature of witness*)

.....  
(*Name of witness*)

.....  
.....  
(*Address of witness*)

Form 2

Section 18(1)(c)

**GENERAL POWER OF ATTORNEY**

**THIS GENERAL POWER OF ATTORNEY** is made on the ..... day of .....  
by ..... of ..... under the *Powers of attorney Act 2000*.

1. **I APPOINT** ..... of .....  
.....  
(*and where appropriate: jointly/jointly and severally*) to be my attorney(s).
2. **I AUTHORISE** my attorney(s) to do on my behalf anything that I may lawfully  
authorise an attorney to do.

**SIGNED BY**

.....  
(*Donor' signature*)

.....  
(*Signature of witness*)

.....  
(*Name of witness*)

.....  
.....  
(*Address of witness*)

**BRITISH COLUMBIA**

*Powers of Attorney Act*

**Schedule**

**Form 1**

*(Section 9)*

**Power of Attorney  
(For the appointment of one attorney)**

This General Power of Attorney is given on ..... *(Date)* by  
..... *(Donor)* of .....  
*(Donor's Address)*

I appoint the following person:

..... *(Name of Attorney)* of ..... *(Address of Attorney)* to be my attorney in accordance with the *Power of Attorney Act* and to do on my behalf anything that I can lawfully do by an attorney.

(The following paragraph may be included if the donor wishes the authority granted by this power of attorney to continue despite any subsequent mental infirmity on the donor's part:)

In accordance with the *Power of Attorney Act*, I declare that this power of attorney may be exercised during any subsequent mental infirmity on my part.

This power of attorney is subject to the following conditions and restrictions: (Cross this line out if there are no conditions or restrictions.)

WITNESSED BY:

.....

*(Signature of Witness)*

.....

*(Print Name of Witness)*

.....

*(Donor)*

.....

*(Address of Witness)*

**Form 2**

(Section 9)

**Power of Attorney  
(For the appointment of more than one attorney)**

This General Power of Attorney is given on ..... (Date) by  
..... (Donor) of .....  
(Donor's Address)

I appoint the following persons:

..... (Name of Attorney) of ..... (Address of Attorney)  
..... (Name of Attorney) of ..... (Address of Attorney)

(Cross out one of the following alternatives)

(who may act separately (or) who must act together) to be my attorneys in accordance with the *Power of Attorney Act* and to do on my behalf anything that I can lawfully do by an attorney.

(The following paragraph may be included if the donor wishes the authority granted by this power of attorney to continue despite any subsequent mental infirmity on the donor's part:)

In accordance with the *Power of Attorney Act*, I declare that this power of attorney may be exercised during any subsequent mental infirmity on my part.

This power of attorney is subject to the following conditions and restrictions: (Cross this line out if there are no conditions or restrictions.)

WITNESSED BY:

.....

(Signature of Witness)

.....

(Print Name of Witness)

.....

(Donor)

.....

*(Address of Witness)*



**HONG KONG**

*Powers of Attorney Ordinance*

Schedule

[Section 7]

**POWERS OF ATTORNEY ORDINANCE  
(Chapter 31)**

**FORM OF GENERAL POWER OF ATTORNEY FOR PURPOSES OF SECTION 7**

THIS GENERAL POWER OF ATTORNEY is made this day..... of..... 19 ... by  
AB of (address) .....

I appoint CD of ..... (address)  
[or CD of (address) ..... and EF of  
(address) ..... jointly or  
jointly and severally] to be my attorney(s) in accordance with section 7 of the Powers  
of Attorney Ordinance.

IN WITNESS whereof I have hereunto set my hand and seal.

(L.S.)

Signature, etc.

(Amended L.N. 441 of 1995)

