



# LAWS OF MALAYSIA

REPRINT

Act 424

## POWERS OF ATTORNEY ACT 1949

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**POWERS OF ATTORNEY ACT 1949**

First enacted	... ..	1949 (Ord. No. 64 of 1949)
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**LAWS OF MALAYSIA****Act 424****POWERS OF ATTORNEY ACT 1949**

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# LAWS OF MALAYSIA

## Act 424

### POWERS OF ATTORNEY ACT 1949

An Act relating to powers of attorney.

[1 January 1950, L.N. 632/1949]

#### Short title and application

1. (1) This Act may be cited as the Powers of Attorney Act 1949.

(2) This Act shall apply to the States of \*Peninsular Malaysia only.

#### Interpretation

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

“Land Administrator” means a Land Administrator appointed under the National Land Code [*Act 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;

“Registrar” and “Senior Assistant Registrar” mean respectively the Registrar and a Senior Assistant Registrar or Assistant Registrar of the High Court.

#### Authentication of powers of attorney

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—

(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—

(i) a Magistrate;

(ii) a Justice of the Peace;

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\*NOTE—All references to “West Malaysia” shall be construed as reference to “Peninsular Malaysia” —see the Interpretation (Amendment) Act 1997 [*Act A996*], subsection 5(2).

- (iii) a Land Administrator;
  - (iv) a Notary Public;
  - (v) a Commissioner for Oaths;
  - (vi) an advocate and solicitor; or
  - (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
- (b) if executed outside \*Peninsular Malaysia, the execution of such instrument is authenticated, in such form as may be accepted by the Registrar, by—
- (i) a Notary Public;
  - (ii) a Commissioner for Oaths;
  - (iii) any Judge;
  - (iv) a Magistrate;
  - (v) a British Consul or Vice-Consul;
  - (vi) a representative of Her Britannic Majesty;
  - (vii) on and after Merdeka Day, any Consular Officer of Malaysia;
  - (viii) in the case of an instrument executed in the Kingdom of Saudi Arabia, the Malaysian Pilgrimage Commissioner; or
  - (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.

(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.

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\*NOTE—All references to “West Malaysia” shall be construed as reference to “Peninsular Malaysia” —see the Interpretation (Amendment) Act 1997 [Act A996], subsection 5(2).

### **Deposit of power of attorney**

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—

- (a) a true copy of the said instrument duly compared therewith and marked by the Senior Assistant Registrar with the words “true copy”; or
- (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.

### **Translation**

(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 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.

### **Fees**

(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.

### **Exception**

(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.

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\*NOTE—All references to “West Malaysia” shall be construed as reference to “Peninsular Malaysia” —see the Interpretation (Amendment) Act 1997 [Act A996], subsection 5(2).

## **Revocation**

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 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.

## **Powers of attorney given for valuable consideration**

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—

- (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
- (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 of the power without the concurrence of the donee of the power, or the death, marriage, mental disorder, unsoundness of mind, or bankruptcy 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 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.

(2) This section applies to powers of attorney created by instruments executed either before or after the commencement of this Act.

**Powers of attorney expressed to be irrevocable for a fixed time**

7. 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—

- (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
- (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 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.

**Payment by attorney under power without notice of death, etc., good**

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.

(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.

**Register of powers of attorney and inspection of register**

**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.

**Office copies**

**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.

**Office copies as evidence**

**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.

**Searches**

**12.** The Registrar and every Senior Assistant Registrar shall, upon application whether made orally or in writing by any person desirous of obtaining information 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:

Provided always that any copy of a document supplied for the purpose of furnishing such information shall be paid for separately under section 9.

**Particulars to be forwarded for record in Kuala Lumpur**

**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.

(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 usual office hours and upon payment of the prescribed fee, search such register and take a copy of any particulars recorded therein.

**Rules**

**14.** The Rules Committee established by the Courts of Judicature Act 1964 [*Act 91*], may from time to time make rules under and in accordance with that Act for—

- (a) prescribing the fees to be charged under this Act; and
- (b) prescribing the charges to be made for the attestation of an instrument creating a power of attorney under section 3.

**Repeal**

**15.** (1) The Ordinance and Enactments set out in the first and second columns of the Second Schedule are hereby repealed to the extent specified in the third column of the Schedule.

(2) Such repeal shall not affect the validity of—

- (a) any power of attorney executed before the commencement of this Act under and in accordance with any such law but such power of attorney shall, if registered, be deemed to be registered under this Act or, if not registered before the commencement of this Act, may be registered by deposit with a Senior Assistant Registrar of a true copy or office copy as the case may be under section 4 and the same shall continue in force until revoked or otherwise determined under this Act.
- (b) any act or payment done or made before the commencement of this Act which was at the time it was so done or made valid under or by virtue of any of such repealed Ordinance or Enactment.

(3) Where any power of attorney was, before the commencement of this Act, deposited in the office of the Registrar or Senior Assistant Registrar in accordance with the repealed Ordinance or Enactment, sections 10, 11, and 12 shall apply as if such document had been a document deposited in accordance with section 4 and where such document had been deposited in the office of the Registrar, the Registrar shall have the powers of a Senior Assistant Registrar under section 10.

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FIRST SCHEDULE

[Section 3]

FORM I

FORM OF AUTHENTICATION IN CASE OF A POWER OF ATTORNEY EXECUTED BY AN INDIVIDUAL

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 the  $\frac{\text{signature}}{\text{thumb-mark}}$  of the donor above named was  $\frac{\text{written}}{\text{affixed}}$  in my presence on this ..... day of ..... 20 ....., and is, to my own personal knowledge, [*or* according to information given to me by trustworthy and respectable persons, namely ..... of ..... and ..... of ....., which information verily believe,] the true  $\frac{\text{signature}}{\text{thumb-mark}}$  of ..... who has acknowledged to me that he  $\frac{\text{is}}{\text{is not}}$  of full age and that he has voluntarily executed this instrument.

Witness my hand .....

FORM II

FORM OF AUTHENTICATION IN CASE OF A POWER OF ATTORNEY EXECUTED BY A COMPANY OR CORPORATION

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 (*state name of company or corporation*) was duly affixed to the above written instrument in my presence in accordance with the regulations of the said  $\frac{\text{Company.}}{\text{Corporation.}}$

Witness my hand .....

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## SECOND SCHEDULE

## [Section 15]

## REPEAL

(1) No.	(2) Title	(3) Extent of repeal
F.M.S. Cap. 66	The Powers of Attorney Enactment	The whole
Johore Enactment No. 18	The Powers of Attorney Enactment	The whole
Kedah Enactment No. 81	Enactment No. 81 (Powers of Attorney)	The whole
Kelantan Enactment No. 8 of 1931	The Powers of Attorney Enactment 1931	The whole
Terengganu Enactment No. 36 of 1356	The Powers of Attorney Enactment	The whole
Straits Settlements Cap. 118	The Conveyancing and Law of Property Ordinance	Part X

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## LIST OF AMENDMENTS

Amending law	Short title	In force from
Ord. 15/1955	Powers of Attorney (Amendment) Ordinance 1955	20-04-1955
L.N. 332/1958	Federal Constitution (Modification of Laws) (Ordinances and Proclamations) Order 1958	13-11-1958
Act 2/1963	National Land Code (Penang and Malacca Titles) 1963	01-01-1966
Act A587	National Land Code (Amendment) Act 1984	25-03-1985

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## LIST OF SECTIONS AMENDED

Section	Amending authority	In force from
2	L.N. 332/1958	13-11-1958
3	Ord. 15/1955 L.N. 332/1958	20-04-1955 13-11-1958
Throughout the Act	Act 2/1963 Act A587	01-01-1966 25-03-1985

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