

## **POWERS OF ATTORNEY ACT, 1882**

**7 of 1882**

**[24th February, 1882]**

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STATEMENT OF OBJECTS AND REASONS "As the law stands, the donee of a power-of-attorney, when executing an instrument pursuant to the power, must sign, and where sealing is required must seal, in his principal's name. The first object of this Bill is to render it legal for such donees to execute in and with their own names and seals. The law respecting the executions of instruments under powers-of-attorney will thus be made accordant with what will be the rule in England from and after 31st December, 1881, and with what is believed to be the practice in the North-Western Provinces, British Burma and, probably, elsewhere in India. This section effecting this is copied from S. 46 of the recent Statutes 44 and 45 Vie. c. 41, which takes effect from the close of the present year. The second object of this Bill is to preclude doubts as to the liability of a donee of a power-of-attorney who makes payments in good faith after the donor of the power has died or become lunatic or bankrupt or insolvent, or has revoked the power, when the fact of death, lunacy, bankruptcy, insolvency or revocation was not known to the donee at the time of making the payment. The section effecting this is copied from section 47 of the Statute above

mentioned, and merely extends to all attorneys the rule as to trustees, executors and administrators making payments under powers, which has been in force in British India for the last fifteen years-See Act 28 of 1866, section 39. The third and last object of the Bill is to provide for the deposit of instruments creating powers of attorney, and for the evidence of the contents of such instruments. The section effecting this is copied (with the modifications necessary to adapt it to India) from 44 and 45 Vict. c. 41, section 48."-Gazette of India, 1881, Part V, page 1473. Amending Act 55 of 1982.- The Law Commission in its Sixty-Eighth Report examined the Powers-of-Attorney Act, 1882 and while suggesting that because of its archaic form and language it should be replaced by a new enactment, it also suggested certain amendments to the Act. As the amendments do not call for any radical or substantial changes in the Act which had worked smoothly for a century, it is proposed, instead of replacing the Act by a new one, to make the necessary amendments therein. 2. The Act though it deals with powers-of-attorney, does not contain the definition of "power-of-attorney". It is proposed to remedy this defect by inserting a suitable definition. 3. The expression "assurance" occurring in section 2 is being omitted as unnecessary. 4. Section 4 of the Act enables original instruments creating powers-of-attorney to be deposited in a High Court, which, without further proof, would be sufficient evidence of the contents of the instruments and their deposit in the High Court. It is proposed to make this facility available even to persons who reside at a distance from the High Courts. Accordingly, a provision is being made for the deposit of these instruments not only in the High Courts but also in the district courts. 5. Section 5 of the Act, as at present worded, gives the impression that the marriage of a minor, which is prohibited by the Child Marriage Restraint Act, is permitted and that a married woman, who is a minor, could execute a power-of-attorney. Therefore, it is proposed to delete the reference to a married woman who is a minor so as to make it clear that a minor, whether married or unmarried, does not have the power to appoint an agent or execute a power-of-attorney. 6. The Bill seeks to attain the aforesaid objects.-S.O.R.-Gaz. of Ind., 14-7-1982, Pt. II, S. 2, Ext., p. 3 (No. 29).

### **1. Short title :-**

This Act may be called The Powers-of-Attorney Act, 1882. Local extent.- It applies to the whole of the India [except the State of

Jammu and Kashmir]; Commencement.- and it shall come into force on the first day of May, 1882.

**1A. Definition :-**

In this Act, "power-of-attorney" includes any instrument empowering a specified person to act for and in the name of the person executing it.]

**2. Execution under power-of-attorney :-**

The donee of a power-of-attorney may, if he thinks fit, execute or do any [\* \* \*] instrument or thing in and with his own name and signature, and own seal, where sealing is required, by the authority of the donor of the power, and every [\* \* \*] instrument and thing so executed and done, shall be as effectual in law as if it had been executed or done by the donee of the power in the name, and with the signature and seal, of the donor thereof. This section applies to powers-of-attorney created by instruments executed either before or after this Act comes into force.

**3. Payment of attorney under power, without notice of death, etc., good :-**

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 insolvent, or had revoked the power, if the fact of death, [\* \*] unsoundness of mind, [\*] insolvency or revocation was not at the time of the payment or act, known to the person making or doing the same. But this section shall not affect any right against the payee of any person interested in any 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. This section applies only to payments and acts made or done after this Act comes into force.

**4. Deposit of original instruments creating powers-of-attorney :-**

(a) An instrument creating a power-of-attorney, its execution being verified by affidavit, statutory declaration or other sufficient evidence may, with the affidavit or declaration if any, be deposited in the High Court [or District Court] within the local limits of whose jurisdiction the instrument may be.

(b) A separate file of instruments so deposited shall be kept; and

any person may search that file, and inspect every instrument so deposited; and a certified copy thereof shall be delivered out to him on request.

(c) A copy of an instrument so deposited may be presented at the office and may be stamped or marked as a certified copy, and when so stamped or marked, shall become and be a certified copy.

(d) A certified 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 High Court [or District Court].

(e) The High Court may, from time to time, make rules for the purposes of this section, and prescribing, with the concurrence of the [State Government], the fees to be taken under clauses (a), (b) and (c). [\* \* \* \* \*]

(g) This section applies to instruments creating powers-of-attorney executed either before or after this Act comes into force.

**5. Power-of-attorney of married women :-**

A married woman of full age shall, by virtue of this Act, have power, as if she were unmarried,] by a non-testamentary instrument, to appoint an attorney on her behalf, for the purpose of executing any non-testamentary instrument or doing any other act which she might herself execute or do; and the provisions of this Act, relating to instruments creating powers-of-attomey, shall apply thereto. This section applies only to instruments executed after this Act comes into force.

**6. Act 28 of 1866, Section 39, Repealed :-**

Repealed by the Amending Act, 1891 (12 of 1891).]