



## ST HELENA

### REVISED EDITION OF THE LAWS, 2017

#### COURTS AND JUSTICE

#### **POWERS OF ATTORNEY ORDINANCE, 1979<sup>1</sup>**

*Ordinance 5 of 1979  
In force 16 November 1979*

*No amendments to 1 November 2017*

*No subsidiary legislation to 1 November 2017*

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#### **POWERS OF ATTORNEY ORDINANCE, 1979**

#### ARRANGEMENT OF SECTIONS

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Schedule: Form of Power of Attorney

AN ORDINANCE to make provision in the law of St Helena in relation to powers of attorney and for connected matters.

#### **Short title**

**1.** This Ordinance may be cited as the Powers of Attorney Ordinance, 1979.

#### **Execution of powers of attorney**

**2. (1)** An instrument creating a power of attorney must be signed by, or by direction and in the presence of, the donor of the power.

**(2)** If such an instrument is signed by a person by direction and in the presence of

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<sup>1</sup> Under section 10 of the Revised Edition of the Laws Ordinance, 1999 this text is authoritative and is the sole authentic edition in respect of the law contained in it as at 1 November 2017.

the donor of the power, 2 other persons must be present as witnesses and must attest the instrument.

**(3)** This section does not affect any requirement in, or having effect under, any other Ordinance as to the witnessing of instruments creating powers of attorney or the rules relating to the execution of instruments by corporations.

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

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

- (a) is a reproduction of the original made with a photographic or other device for reproducing documents in facsimile; and
- (b) contains the following certificate or certificates signed by the donor of the power or by a justice of the peace or legal practitioner, that is to say—
  - (i) a certificate at the end to the effect that the copy is a true and complete copy of the original; and
  - (ii) if the original consists of 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)** If 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 reference in it to the original as references to the copy from which the further copy is made.

**(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 justice of the peace or legal practitioner is, until the contrary is proved, sufficient for the purposes of this section.

**(4)** This section does not affect any other method of proof authorised by any other Ordinance.

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

**4. (1)** If a power of attorney is expressed to be irrevocable and is given to secure—

- (a) a proprietary interest of the donee of the power; or
- (b) the performance of an obligation owed to the donee,

then so long as the donee has that interest or the obligation remains undischarged, the power –

- (i) must not be revoked by the donor without the consent of the donee;
- (ii) is not revoked by the death, incapacity or bankruptcy of the donor or, if the donor is a corporate body, by its winding up or dissolution.

**(2)** A power of attorney given to secure a proprietary interest may be given to any person entitled to the interest and any persons deriving title under that person to that interest, and those persons are duly constituted donees of the power for all purposes of the power, without affecting any right to appoint substitutes given by the power.

**(3)** This section applies to powers of attorney whenever created.

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

**5. (1)** A donee of a power of attorney who exercises the power at a time when it has been revoked does not, by reason of the revocation, incur any liability (either to the donor or to any other person) if at that time the donee did not know that the power had been revoked.

**(2)** If 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 is, in favour of that person, as valid as if the power had then been in existence.

**(3)** If 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, the person is entitled to assume that the power is incapable of revocation except by the donor acting with the consent of the donee and must accordingly be treated for the purposes of subsection (2) as having knowledge of the revocation only if the person knows that it has been revoked in that manner.

**(4)** If the interest of a purchaser depends on whether a transaction between the donee of the power of attorney and another person was valid by virtue of subsection (2), it is to be conclusively presumed in favour of the purchaser that that person did not at the material time know of the revocation of the power if—

- (a) the transaction between that person and the donee was completed within 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 that person did not at the material time know of the revocation of the power.

**(5)** Without affecting 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 a donor) which has the effect of revoking the power.

**(6)** In this section—

**“purchaser”** means—

- (a) a purchaser in good faith for valuable consideration;
- (b) a lessee, mortgagee or other person who for valuable consideration acquires an interest in property; and
- (c) an intending purchaser;

**“valuable consideration”** includes marriage but not a nominal consideration in money.

**(7)** This section applies whenever the power of attorney was created but only to acts and transactions after the commencement of this Ordinance.

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

**6. (1)** The donee of a power of attorney may, if the donee thinks fit—

- (a) execute any instrument with his or her own signature; and
- (b) do any other thing in the donee’s own name,

by the authority of the donor of the power; and any document executed or thing done in that

manner is as effective as if executed or done by the donee with the signature, or, as the case may be, in the name, of the donor of the power.

(2) 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 does not affect any provision in any other Ordinance requiring an instrument to be executed by a person specified in the provision.

(4) This section applies to powers of attorney whenever created.

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

7. (1) Subject to subsection (2), 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 this Ordinance, operates to confer—

(a) on the donee of the power; or

(b) if there is more than one donee, on the donees acting jointly or acting jointly or severally, as the case may be,

authority to do on behalf of the donor anything which the donee can lawfully do by **an** attorney.

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

### **Exemption from stamp duty**

8. A general power of attorney in the form set out in the Schedule is exempt from duty under the Stamp Duties Ordinance.

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### **SCHEDULE** (Section 7(1))

#### **FORM OF GENERAL POWER OF ATTORNEY FOR PURPOSES OF SECTION 7**

THIS GENERAL POWER OF ATTORNEY is made this ..... day of ..... 20..... by A.B. of (Address) .....

I appoint C.D. of (Address) ..... or C.D. of (Address) ..... and E.F. of (Address) ..... jointly or jointly and severally to be my attorney(s) in accordance with section 7 of the Powers of Attorney Ordinance, 1979.

In Witness whereof I have hereunto set my hand.

SIGNED by A.B. in the presence of: (Signature, etc, of A.B.)  
.....  
(Signature of witness)

.....  
(Full name of witness in block capitals)

.....  
(Address of witness in block capitals)

.....  
(Signature of second witness where required under section 2(2))

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(Full name of second witness in block capitals)

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(Address of second witness in block capitals)

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