

Powers of Attorney (Jersey) Law 1995

Last reviewed: February 2023

The Powers of Attorney (Jersey) Law 1995 (the **PoA Law**) came into force on 1 October 1995 and made a number of significant changes to Jersey law relating to powers of attorney.

Since 1 October 1995

- only powers of attorney used in transactions which are registered in the Public Registry in Jersey or where registration is required by another Jersey statute are required to be registered in Jersey;
- irrevocable security powers of attorney are recognised; and
- execution requirements are straightforward.

The PoA Law does not affect the law and custom of Jersey relating to the naming of attorneys without whom the donor may not transact, a procedure used as a measure to protect the donor's assets in certain circumstances and which deprives the donor of such a power of the ability to transact alone.

Powers of attorney requiring registration (Registrable powers)

Any power of attorney which is to be used to effect a transaction which must be registered in the Public Registry in Jersey must itself be registered and will not be effective for its purpose until so registered. Such transactions include:

- the sale or purchase of real property in Jersey (including leases with terms in excess of nine years); and
- any transaction associated with real property in Jersey (for example transactions to resolve boundary disputes or waive covenants in title to real property) and hypothecs and bonds for the repayment of monies loaned on real property in Jersey.

Any power of attorney which is required by some other Jersey statute to be registered must be so registered to become effective. The only such statutory requirement of general relevance is for lasting powers of attorney to be registered under the Capacity and Self-Determination Law 2016. Lasting powers of attorney enable an individual to appoint another person as attorney to manage the individual's welfare, health, property and affairs when the individual lacks capacity to do so. This guide does not consider lasting powers of attorney.

Execution and effect of powers of attorney

Unless it states otherwise (by specifying an effective date for example) a power of attorney which is not a registrable power of attorney takes effect upon being duly executed. Due execution requires the power to be signed by the donor, or acknowledged by the donor to have been signed by him, in the presence of one witness who is not a party to the power of attorney. The witness to a power of attorney which is not registrable is not required to have particular qualifications but must not be a donee of the power.

A body corporate or limited liability company (LLC) may duly execute a non-registrable power of attorney in the manner permitted by its articles of association, other internal regulations or LLC agreement (which may but need not require the use of a Seal) without any further attestation.

A registrable power of attorney is not exercisable until it has been registered in the Public Registry. It will be duly executed if it is signed by the donor, or acknowledged by the donor to have been signed by him, in the presence of a qualified witness who is not a donee of the power of attorney.

A body corporate or LLC may execute a registrable power of attorney in the manner permitted by its articles of association, other internal regulations or LLC agreement but, since such execution is stated to be equivalent to signature only, attestation by a qualified witness will be necessary in this case.

Qualified witnesses are as follows:

- if the power is executed in the Island; Jurats of the Royal Court, members of the States, advocates or solicitors of the Royal Court and notaries public;
- if the power is executed outside the Island, one of the persons mentioned in (i) above, or a judge, justice of the peace, magistrate, mayor, chief officer of any city or municipal corporation, a barrister in England and Wales or Northern Ireland, an advocate in Scotland, a solicitor in England and Wales, Northern Ireland or Scotland, a lawyer qualified under the legal system of the place of execution, a person authorised to take oaths or affidavits or the equivalent thereof by the law of the Island or the law of the place of execution, a British consular official (or a person for the time being discharging the duties of such an official), or, if the donor of the power is a member of the British armed forces, an officer of those forces authorised to take affidavits.

The Royal Court may, in its discretion, accept registrable powers of attorney where the signature by the donor has been attested by a person who was not a qualified witness.

Proving powers of attorney

A power of attorney may be proved by a copy of the original certified by the donor or any person who would be a qualified witness, at the foot of each page as a true and complete copy of the corresponding page of the original.

Irrevocable powers of attorney

The PoA Law enables irrevocable powers of attorney to be given in connection with the provision of security (**Security Powers of Attorney**). Provided that the Security Power of Attorney is expressed to be irrevocable and is given for the purpose of facilitating the powers of a secured party under the Security Interests (Jersey) Law 2012 or of powers pursuant to a security agreement, or is given pursuant to or in connection with or for the purpose of or ancillary to security governed by foreign law, then, so long as the security is effective, the courts of Jersey will accept that the donor may not (except with the consent of the donee) revoke such a Security Power of Attorney. Further a Security Power of Attorney will not be revoked as a matter of Jersey law by the death, incapacity, bankruptcy or dissolution of the donor to prevent a lender who is the donee of such a Security Power of Attorney realising security held in an event of default, regardless of the death, incapacity or bankruptcy of the borrower.

Where security is taken by some method other than assignment of title to collateral it is recommended that he a secured party takes a power of attorney to assist in the realisation of its security if the need arises.

Protection of attorney and third parties

A donee of a power of attorney does not incur any liability where the donee acts pursuant to a power which has been revoked provided the donee did not know that the power had been revoked. Equally, where a power has been revoked and a person, without knowledge of the revocation, deals with the donee of the power, the transaction between the donee and the third person will be as valid as if the power had then been in existence.

In addition, a purchaser whose interest depends on the validity of a previous transaction between an attorney and a third person, may assume that the third person did not know of a revocation at the time of the transaction with the attorney if that transaction occurred within twelve months of the date on which the power came into operation or if the third person makes an affidavit, before or within three months after the purchase, stating that he did not know of the revocation of the power at the time he transacted with the attorney. Knowledge of revocation includes knowledge of the death, incapacity or bankruptcy of the donor of the power of attorney.

In order to avoid difficulties in later transactions it is recommended that any person purchasing from an attorney more than twelve months after the date of the attorney's power, swears such an affidavit at the time of that transaction.

General powers of attorney

The Second Schedule to the PoA Law contains a specified form of general power of attorney which, subject to due execution and appropriate attestation, will confer on the donee or donees, either jointly, or jointly and severally, authority to do on behalf of the donor anything he can lawfully do by an attorney. This does not apply to functions which the donor has as a trustee or personal representative.

Substitute attorneys

Provided a power of attorney contains the appropriate authorisation, an attorney may appoint a substitute who may exercise the powers of the original attorney to the extent authorised in the power appointing him. In the case of a registrable transaction both the original power of attorney and the substitute power must be registered before the transaction can be effected.

Revocation and abandonment

A power of attorney, other than a Security Power of Attorney or one which the law permits to be irrevocable for a specified period, may be revoked or abandoned by an instrument in writing in the forms set out in the Third Schedule to the PoA Law. Such revocation or abandonment will automatically revoke any appointment of a substitute made under the original power of attorney. The revocation must be executed in the same manner as the power of attorney and where the instrument of revocation or abandonment relates to a registrable power of attorney it too must be registered and is of no effect until so registered.

It is not necessary to revoke in writing a power of attorney expressed to have a limited life.

In addition to an irrevocable Security Power of Attorney, a power of attorney can be expressed to be irrevocable for up to one year from the date on which it is granted or comes into effect, whichever is the later.

A power of attorney granted after 1 October 1995, other than an irrevocable Security Power of Attorney, is automatically revoked by the death, incapacity, bankruptcy or dissolution of the donor.

Contacts

A full list of contacts specialising in corporate law can be found [here](#).