

Powers-of-Attorney Act, 2012

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Powers-of-Attorney Act, 2012

(Act No. XXXV of 2012)

[24 September, 2012]

An Act to make a new Powers-of-Attorney Act by repealing the Powers-of-Attorney Act, 1882

WHEREAS it is expedient and necessary to make a new Powers-of Attorney Act regarding provisions relating to conferring power for performing any function under power-of-attorney and other provisions ancillary thereto including registration and termination thereof by repealing the Powers-of Attorney Act, 1882;

NOW, THEREFORE, it is hereby enacted as follows:-

1. Short title and commencement.- (1) This Act may be called the Powers-of-Attorney Act, 2012.

(2) It shall come into force on such date as the Government may determine by notification in the official Gazette.

**This Act has come into force on 17 Ashar, 1420 BE vide 01 July, 2013 AD by S.R.O No. 197-Law/2013, Dated: 26 June, 2013 AD.*

2. Definitions.- In this Act, unless there is anything repugnant in the subject or context,-

- (1) "power-of-attorney" means any instrument by which a person legally confers power to another person on his behalf to perform the functions described in that instrument;
- (2) "consideration value" means the market value of the part which the donee of irrevocable power is entitled to sell or transfer any land for the development and any money received by the donor of power, if any, which is deemed to be the value of the deed;

- (3) "person" includes any person, partnership business, association, company, statutory body and co-operative society;
- (4) "irrevocable power-of-attorney" means any power of attorney conferred for the purpose of sale of any immovable property, execution of any sale contract or for giving mortgage of any immovable property against loan, or any power of attorney given to execute such instrument including land development by taking consideration value against the immovable property;
- (5) "rules" means rules made under this Act;
- (6) "land development" means the preparation of any residential or commercial plots for management and sale, or development of any plot or land through the construction of apartments or mixed floor spaces or flats;
- (7) "general power of attorney" means a power-of-attorney executed on any matter other than the irrevocable power-of-attorney executed on the matter referred to in clause (4);
- (8) "Registration Act" means the Registration Act, 1908 (Act No. XVI of 1908).

3. Application of other laws.- Any provision regarding power-of-attorney which has not been provided in this Act but provided in any other law, shall be applicable, subject to being consistent with this Act.

4. Delegation of power through irrevocable power-of-attorney.- (1) Each irrevocable power-of-attorney relating to land development against acceptance of consideration value shall have a specified term, and shall remain in force for such term on irrevocable conditions.

(2) Notwithstanding anything contained in sub-section (1), after expiry of the term of power-of-attorney relating to land development, the power relating to sale of the share of the donee of power, execution of any sale contract or execution of any mortgage deed of immovable property against loan shall not be affected,

and the concerned power-of-attorney shall be deemed to be in force until such power is exercised.

(3) Notwithstanding the provisions of sub-sections (1) and (2), if the purpose or condition of the power-of-attorney is disrupted or any party suffers loss, the donor or donee of the power may terminate the power conferred in the instrument giving 30 (thirty) days notice by registered post, and a copy of the notice shall be delivered to the concerned sub-registry office for filing:

Provided that if any action is taken in accordance with the provisions of section 13, the power conferred in such instrument shall not be terminated until it has been finally disposed of.

(4) Upon the issuance of the notice under sub-section (3), the validity of the said power-of-attorney shall stand suspended till it is finally disposed of in accordance with the provisions of section 13.

(5) Before the expiration of the term of the power-of-attorney, the donor of the power and the donee of the power may, on the basis of mutual consent, extend the term of the power-of-attorney by executing a registered agreement.

(6) If the donor of the power and the donee of the power dies or becomes legally unable to execute the instrument before the expiration of the term of the irrevocable power-of-attorney, the liability or right arising out of the instrument shall automatically be conferred upon the legal heir or successor of the person died or unable:

Provided that, subject to the provisions of section 9, this provision shall not apply to a single donee.

5. Issuance of notice, etc.- (1) If a notice under this Act is required to be issued against any party or person and the parties do not otherwise agree to issue such notice, such notice shall be deemed to have been issued against that party or person, if-

- (a) it has been delivered to him personally or to the address of his business or to his usual place of residence or in any other way to the address of his letter; and

- (b) it is sent to the last known address of his business, place of residence or the address of his letter by registered post, by courier service or by any other means in case he is not found after a normal search at any place mentioned in clause (a), and it contains the proof of such delivery.

(2) The notice shall be deemed to have been received on such date as it is to be delivered or, as the case may be, sent.

6. Execution of power-of-attorney.- (1) Notwithstanding anything contained in the Registration Act, the registration of the irrevocable power-of-attorney executed under this Act is mandatory and in this case, the provisions of section 52A of the Registration Act shall apply.

(2) The instrument of power-of-attorney executed under sub-section (1) must contain a clear description of the purpose of the donor of the power and the responsibilities, powers and functions of the donee of the power.

(3) Photographs, 1 (one) for each, of the donor and the donee of the power shall permanently be attached on the document of power-of-attorney to be executed under sub-section (1), and a copy of the national identity cards of both of them shall also be attached therewith.

(4) Notwithstanding anything contained in sub-section (3), the provisions of sub-section (1)(c) of section 33 of the Registration Act shall, subject to the provisions of sub-section (5), apply to a donor of power residing outside Bangladesh.

(5) If the donor of the power resides outside Bangladesh, at the time of execution of the power-of-attorney, the donor of the power shall attest the photograph of the donee of the power attached under sub-section (3) with signature.

(6) The instrument of irrevocable power-of-attorney executed abroad shall be stamped as required by the concerned Collector in accordance with section 18 of the Stamp Act, 1899 (Act II of 1899) after authentication by the Ministry of Foreign Affairs upon first entry into Bangladesh.

(7) A copy of the power-of-attorney stamped under sub-section (6) shall be sent by the Collector to the concerned Sub-Registrar, and if any such copy is so sent, the concerned Sub-Registrar shall, notwithstanding anything contained in section 89 of the Registration Act, take measures for preservation by recording it in Book No. 1.

7. Legal consequences of any act done by the donee of the power.- Any obligation arising out of the act executed or done by the donee of the power shall have effect as if the donor of the power himself had executed the act.

8. Consequences of death of any one of the joint donors of the power.- If there is more than one donors of an irrevocable power-of-attorney, then in the event of death of any one of the donors of the power before fulfillment of the purpose of the power-of-attorney, his heirs shall replace the deceased donor of the power and execute any act as if the donor of the power had not died.

9. Consequences of death of any one of the joint donees of the power.- If there is more than one donees of an irrevocable power-of-attorney, then in the event of death of any one of them, the power-of-attorney shall not be revoked but remain intact and effective to the remaining surviving donees of the power.

10. Payment under power-of-attorney without notice of death, etc.- If any person makes any payment or does any act in good faith, in pursuance of a power-of-attorney, without being known of the death, lunacy, unsoundness of mind, bankruptcy or insolvency of the donor of the power-of-attorney or of the termination of the power-of-attorney, the person shall have the like remedy against the donee of the power as he would have had against the donor of the power.

11. Termination of the power-of-attorney.- (1) The power-of-attorney shall be terminated in the following cases, namely: -

- (a) if the power-of-attorney is executed for the purpose of carrying out a particular action, after the execution of that action or if it has been executed for the purpose of accomplishing a particular purpose, after accomplishing the purpose;

- (b) if the power of attorney is executed for a specified period, subject to sub-section (1) of section 4, after the expiry of that period;
- (c) upon the demolition or annihilation of the subject matter on which the power of attorney is executed;
- (d) in the case of a power-of-attorney other than an irrevocable power-of-attorney, if the donor of the power becomes bankrupt or of unsound mind or dies, or the legal entity of the donor of the power does not exist.

(2) The donor of a general power-of-attorney may terminate the power conferred under the power-of-attorney by giving 30 (thirty) days' notice to the donee of the power by registered post:

Provided that all actions taken in pursuance of the said power-of-attorney before issuance of such notice of termination shall be deemed to be valid.

(3) The donee of the power may, in like manner as is provided in sub-section (2), relinquish the duties of the power-of-attorney by giving 30 (thirty) days' notice to the donor of the power by registered post.

12. Registration fees, etc.- The fees of any irrevocable power-of-attorney executed under this Act shall be determined in accordance with section 78 of the Registration Act.

13. Dispute resolution.- (1) If any dispute arises out of the power-of-attorney registered under the Registration Act, the parties shall first try to settle it through amicable settlement among themselves.

(2) If, after taking the step of amicable settlement under sub-section (1), it fails due to non-cooperation of either party, the other party shall give notice to the other party to settle the matter under dispute through an impartial arbitrator.

(3) The recipient of the notice under sub-section (2) shall appoint a mediator jointly with the sender of the notice within 30 (thirty) days of receipt of such notice.

(4) The decision of the arbitrator appointed by the parties shall be binding on the parties including any claimant through or under them, and no party shall have the right to raise any objection against it in any court.

(5) If the parties fail to appoint an arbitrator pursuant to sub-section (3), either party may file a suit in any appropriate court for the settlement of the disputed matter.

14. Power to make rules.- The Government may, by notification in the official Gazette, make rules for the purposes of this Act.

15. Authentic English Text of this Act.- (1) After the commencement of this Act, the Government may, by notification in the official Gazette, publish an Authentic English Text of this Act.

(2) In the event of conflict between the Bangla text and the English text, the Bangla text shall prevail.

16. Repeal and savings.- (1) The Powers-of-Attorney Act, 1882 (Act VII of 1882) is hereby repealed.

(2) Notwithstanding the repeal under sub-section (1), the acts done or actions taken under the repealed Act shall be deemed to have been done or taken under this Act.