

## UNLEASHING THE POWER OF ATTORNEY IN NAVIGATING BUSINESS AFFAIRS

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### ABSTRACT

*The power of attorney is a legally binding document that enables the business to navigate its affairs smoothly, especially in case of unforeseen disruptions like unavoidable traveling, health issues, and incompetency of the owner of the business. However, in the rapidly growing phases of the business, change is constant and time is essence thus most often owners face myriad challenges and exhilarating situations during hectic business operations. It is necessary to take decisions actively to affect the business operations efficiently. Further, this article embarks on the transformative role of the power of attorney in driving the continuity of business operations. While executing the power of attorney the grantor needs to be cautious about governing law, consideration, duration, limitations, and the type of the power of attorney. Thereby power of attorney establishes the principal and agent relationships between the grantor and attorney. Further, this article elucidates the duties responsibilities, and the role of the power of attorney holder while exercising the power under the power of attorney. It is a meticulous process to appoint the representatives for executing the power of attorney. Further, this article demonstrates real-life case studies that emphasize the execution of power of attorney and also highlight the practical difficulties that businesses may face if power of attorney is not executed properly. As compared to the future, this article unveils emerging trends and integration of technology in the power of attorney. Thus power of attorney plays a very significant role in maintaining the smooth working condition of the business with proper application otherwise it would become a dangerous document that may adversely impact on business.*

**Keywords:** Power of Attorney, Attorney Holder, Grantor, Business Affairs.

### INTRODUCTION

Business is the corporate entity that has to run its day-to-day affairs through human sources. These involve huge responsibilities, challenges, and activities that the entrepreneur or owner of the business need to take plenty of decisions for managing the business affairs. However, some of the unexpected curveballs in life like unavoidable travel obligations, and health

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\*LAW GRADUATE.

issues may not allow the owners to manage every activity of the business actively and accurately. For that purpose, there is one arrangement in the purview of the law called 'Power of Attorney'. Power of attorney is the legal document that authorises someone to act on behalf of the person or company. It plays a very crucial role in the continuity of business affairs without any delay or stoppage, especially in case of incapacitation or absence.

The concept of power of attorney is rooted in law since long ago. But in recent years demand and scope of power of attorney has been increasing in business due to the dynamic growth in the business world. The power of attorney establishes principal and agent relationships between grantor and attorney i.e., company and person to whom the power has been delegated. The principal must be cautious while appointing the competent person as an agent while authorizing power to avoid any future complications. There are different types of power of attorney, applications of the power of attorney depend upon the factual circumstances of each business activity. The Power of attorney is governed as per the provisions of the Power of Attorney Act 1882 in India. Accordingly, under sec 1 (A) "Power-of-Attorney" includes any instruments empowering a specified person to act for and in the name of the person executing it<sup>1</sup>.

In business, power of attorney may be used for numerous purposes in contracts, agreements, the real estate field, stocks, bonds, securities, tax returns, insurance, also for filing criminal complaints and other documents. On the other hand, it is required to know under what circumstances the power of attorney needs to be registered compulsorily and also about the stamp duty for power of attorney. Before executing power of attorney in managing business affairs it is essential to determine the scope of delegation, role & responsibilities of the attorney and also about limitations and considerations associated with power of attorney for the best practice and for getting good results otherwise this document would be a dangerous weapon to business as the person to whom delegation has been made can misuse the power if the document is not properly executed that may lead to practical difficulties in future. However, the judiciary has been providing various judgments for the execution of the power of attorney. The proper implementation of the power of attorney in managing business affairs enables the business to take decisions proactively even in case of unforeseen circumstances and helps to lead the smooth running of the business. Thus power of attorney can be an extraordinary tool for business owners, entrepreneurs, and corporate entities as it offers

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<sup>1</sup> The Powers-of-attorney Act 1882, s 1( A)

flexibility and assurance in managing business transactions, thereby it ensures the continuity of various business operations.

### **REQUIREMENT OF POWER OF ATTORNEY IN BUSINESS**

In certain situations, it is expedient in business to use power of attorney as a tool for managing business affairs. In the event of illness, disability, and unavoidable travel business owner is unable to engage personally to manage the affairs of the business<sup>2</sup>. In such circumstances, decision-making is the very needy thing to manage the continued operations of the business. Power of attorney provides practical solutions by designating some other person to decide on behalf of the grantor. The grantor delegates the power to an eligible trusted person to act on behalf of the grantor in case to take necessary decisions in different transactions of the business. Thereby it reduces the burden of work on individuals and also saves the time of the business. Businesses need to appoint an attorney who is authorised to represent the business in different transactions like real estate transactions, contract negotiation, draftings, and also in making any decision in the financial management of the business. Thereby power of attorney plays a pivotal role in the continuity of business operations.

### **DIFFERENT KINDS OF THE POWER OF ATTORNEY**

Before drafting the power of attorney as a legally enforceable document, it is crucial to comprehend the scope of such types of power of attorney to prevent future disputes in business. In the realm of business, the appropriateness of employing the power of attorney hinges on the different circumstances of the business. There are two types of power of attorney are as follows-

- General power of attorney – The principal empowers the agent with the right to carry out all legal acts on his behalf without restricting it to a particular transaction or act<sup>3</sup>. There are no restrictions on this method. Full pledged discretion is given to the agent to exercise his power on behalf of the principal. The scope of the general power of attorney is broader. Most of the time it has not opted in business in case there is a specific purpose to accomplish. The power granted under the general power of attorney can be more comprehensive or tailored to specific needs or requirements.

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<sup>2</sup> Mary McMahon, 'What Is a Power of Attorney for Business?' (*MyLawQuestions*, 25 April 2023) <<https://www.mylawquestions.com/what-is-a-power-of-attorney-for-business.htm>> accessed 14 May 2022

<sup>3</sup> YSRAO JUDGE, 'Power of Attorney' (*Legal Service India*) <<https://www.legalservicesindia.com/article/1136/Power-of-Attorney.html>> accessed 14 May 2023

- Specific power of attorney – The authority is restricted to act only on certain matters or only a particular kind of transaction or to carry out a specific legal transaction for the Principal<sup>4</sup>. The scope is limited and extended only up to the particular event of work. Many times business opts for this method if specific authority needs to be delegated to the agent.

## REGISTRATION OF POWER OF ATTORNEY

Registration of the power of attorney for business transactions is not compulsory in India. But it is more recommendable for valid enforceability. The registered power of attorney provides authenticity and protects the interest of all the parties involved in such transactions. If the power of attorney creates interest in the property then it needs to be authenticated with the registrar or sub-registrar of the appropriate jurisdiction. In case of power of attorney executed outside India then it must be authenticated by the notary public, any court, judge, magistrate, counsel, or representative of the central government<sup>5</sup>. Here is the process involved in the registration of power of attorney in business transactions:

- Drafting the power of attorney on stamp paper by outlining the terms and conditions<sup>6</sup>.
- During the time of registration, the witness is required for the testifying of the execution of the document. The number of witnesses and the other requirements depend upon the particular circumstances of each document.
- The registration fees depend upon the different transactions which are involved in the business. Documents like identity proof and address are relevant documents for the registration process.
- The registrar will keep one copy in government records.

In *Suraj Lamp & Industries Pvt. Ltd. v/s State of Haryana and Anr*<sup>7</sup>, the honorable Supreme Court held that registration of the power of attorney is compulsory whenever such documents involve the transfer of the immovable property.

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<sup>4</sup> *Ibid*

<sup>5</sup> 'Power of Attorney' (india filings) <<https://www.indiafilings.com/learn/power-of-attorney/#:~:text=Registration%20of%20Power%20of%20Attorney%20is%20not%20required,be%20executed%20before%20and%20authenticated%20by%20a%20Magistrate.>> accessed 15 May 2023

<sup>6</sup> Shubham Chopra, 'POWER OF ATTORNEY AND ITS REGISTRATION' (*REDLAW*, 10 October 2022) <<https://redlaw.in/power-of-attorney-and-its-registration/>> accessed 15 May 2023

<sup>7</sup> *Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana & Anr.* SLP (C)13917/2009

## STAMP DUTY FOR POWER OF ATTORNEY IN BUSINESS TRANSACTIONS

For business transactions, stamp duty applies to documents of power of attorney in India. Stamp duty is the mandatory payment as paid as per the provisions of the Indian Stamp Act and along with the respective state stamp Acts. Each state has its stamp duty rates for different document that includes the power of attorney also. Failure to pay the required stamp duty may also make the document invalid and cannot be used as evidence before the court.

e.g In Karnataka, if the business transaction is relating to the assignment or transfer of intellectual property rights (i.e., patent rights, copyrights, or trademarks rights.) as per the Article 5 (i-c) of the Karnataka Stamp Act, stamp duty payable as one Rupee for every one thousand rupees or part thereof on the amount or consideration in the agreement, but not less than rupees two hundred<sup>8</sup>.

## APPOINTMENT, ROLE & RESPONSIBILITIES OF THE POWER OF ATTORNEY HOLDER

- Appointment of the power of attorney holder

Appointing the right person for the right job always ensures the business gets a good outcome as a result. Therefore while appointing the power of attorney holder grantor must be very cautious while selecting the right person as the representative for carrying out the business affairs. An ideal power of attorney holder is that who must be willing to act in that capacity and he has to be impartial having integrity. An attorney should be loyal to the grantor and should not disclose any confidential matters related to the business<sup>9</sup>. While Appointing the power of attorney holder business owner or directors must ensure the eligibility of that person by ensuring the competency of the holder to whom authority will be delegated to avoid future complications.

- The power that can be delegated to the attorney

It mainly depends on the factual events of each business transaction. Likewise, the attorney is authorised to take financial or medical or can manage business affairs as per the terms of the power of attorney. In that regard, the agent is authorised to execute contracts, deeds, bonds, mortgages, notes, checks, drafts, and money orders and to manage, compromise, settle, and adjust all matters about business affairs. Further authorised to sell any shares of stocks,

<sup>8</sup> Karnataka Stamp Act 1957, a 5 (i-c)

<sup>9</sup> 'Power of attorney' (*Latest Laws*) < <https://www.latestlaws.com/library/legal-documents/power-attorney-2/#17>> accessed 15 may 2023

bonds, or other securities and to file, and sign all tax returns, insurance forms, and any other documents and to make health-care decisions for the grantor or his minor children and to enter into contracts, and to perform any contract, agreement, writing, or thing to make, sign, execute, and deliver, acknowledge any contract or agreement<sup>10</sup>. Thereby attorney is empowered to exercise the power depending on the terms of the power of attorney in business.

- Role of power of attorney holder as an agent

The power of attorney holder plays the role of the agent as mentioned in section 182 of the Indian Contract Act 1872. Accordingly, An 'agent' is a person employed to do any act for another, or to represent another in dealings with a third person<sup>11</sup>. The meaning of the agent as per the said Act, the agent acts on behalf of the principal. An agent acts as a representative of the principal by exercising his /her power vested by the principal i.e., the grantor. The agent is authorised to decide on behalf of the grantor.

- Duties & responsibilities of the power of attorney holder

An attorney or holder shall exercise his power within the ambit of the power that has been delegated not more than the power of delegation. A further attorney shall not sub-delegate his/her power without the consent of the grantor. Attorney if fails to act as per the legally binding document he/she shall be liable for such breach<sup>12</sup>. An attorney must exercise his power with the utmost good faith if any loss is suffered due to the act of the attorney then the attorney is made liable for those losses suffered by the grantor.

### **Responsibilities of the power of attorney holder**

1. Managing the business affairs -As an agent is responsible for managing the business affairs by entering into the contract, signing the document on behalf of the business, making any financial decisions, etc., depending on the specifications and the limitation outlined in the power of attorney.
2. Safeguarding the assets and the interest of the business- The power of attorney holder is responsible for protecting the interests, assets, and financial status of the business. Thereby making prudent managing investments, paying bills, and expenses, and also

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<sup>10</sup> *Ibid* 9

<sup>11</sup> The Indian Contract Act 1872, s 182

<sup>12</sup> *Ibid* 9

handling the contractual obligation depending on the specific terms of the power of attorney.

3. Exercise fiduciary duty - The power of attorney holder has to be acted with utmost good faith and loyalty towards the business. While acting under a fiduciary relationship with the grantor, the attorney holder must exercise reasonable care, due diligence, and skills while handling business matters.
4. Communications and reporting – The principal or grantor is away or unable to actively participate, and the attorney holder's role in communication becomes even more significant. By conveying pertinent information, updates on business affairs, and seeking the grantor's input and guidance when required, the attorney holder strengthens the grantor's involvement and ensures their interests are well-represented. Regular communication between the attorney holder and the grantor of the business is imperative, particularly when the principal is unavoidably traveling or absent due to other circumstances. These communications assume a vital role in keeping the grantor informed and engaged.
5. Complying with Legal and Regulatory Obligations: The power of attorney holder is responsible for compliance with all the applicable legal and regulatory requirements by adhering to the relevant laws, regulations, and industry standards, fulfilling tax obligations, etc., depending on the power which is deleted to the attorney.

It is important to note that the specific responsibilities of a holder may vary based on the terms outlined in the document and the applicable laws.

### **PRACTICAL DIFFICULTIES AND SOLUTIONS**

Power of attorney is a very important document that plays a crucial role in the continued operation of business affairs. Therefore while executing the power of attorney grantors need to be very cautious otherwise it may lead to various practical problems in the future. Some of the major problems are lack of legal authority, misunderstandings, inability to represent the principle if delegation is not properly done, ineffective decision-making, and financial risk to the business. To overcome these barriers it is crucial to ensure that the power of attorney document is properly executed, complies with the applicable laws and regulations, and clearly defines the powers and limitations granted to the attorney.

To overcome these barriers it is important to engage the services with qualified attorneys, regular review, and updates of the power of attorney according to business needs will sort out

any future difficulties. The verifications, and authentications for the documents will add high authenticity. These should be tailored to the specific circumstances and legal requirements of the business.

## CONCLUSION

Power of attorney plays a crucial role in managing business affairs and in the continued operations of the business, especially in case of incapacity and absence of the owners of the business. By understanding the legalities, responsibilities, and challenges associated with the power of attorney businesses can mitigate the risk, maintain business continuity, and make informed decisions. Appointing the right representatives for the power of attorney enables effective business management. On the other hand, if the attorney has not exercised the power properly then the power of attorney can be revoked depending upon the terms of the documents.

However, emerging future trends in business like advancements in digitalization, remote management, and enhanced security will streamline power of attorney processes and ensure greater efficiency and compliance. In that regard, electronic signatures are being used in power of attorney to execute the document as per jurisdictional laws. Thereby it enables businesses to save cost, time, and continued operations of business especially when the owner's physical presence is not possible.

Finally, the proper execution and management of the power of attorney are vital for business success. It serves as a valuable tool for maintaining operational continuity, by addressing unforeseen circumstances and empowering trusted representatives to act on behalf of the donor. To avoid any future disputes, businesses must leverage the potential power of attorney in their operation by prioritising careful execution, regular review, and compliance with legal requirements.