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The Extent and Use of Power of Attorney in Malaysia



Understanding how powers of attorney work in Malaysia, their legal framework and the critical gaps that leave families vulnerable when proper documentation is missing.

Imagine your elderly parent suddenly falls ill and can no longer manage their bank accounts or property transactions. Without proper legal documentation, your family faces months of court applications just to access funds needed for medical care. This scenario plays out daily across Malaysia, highlighting why understanding powers of attorney has become essential for every family's financial security.

UNDERSTANDING THE POWER OF ATTORNEY FRAMEWORK

A power of attorney (POA) creates a legally binding agency relationship under the Contracts Act 1950. The person granting the authority becomes the “Donor” or “Principal,” while the appointed representative is the “Donee” or “Attorney.” This arrangement allows the Attorney to act on behalf of the Principal in dealings with third parties, providing essential flexibility when circumstances prevent direct involvement.

THE THREE CRITICAL PLANNING AREAS

Malaysian families typically utilise POAs across three key scenarios:

Financial Planning: Managing bank accounts, executing property transactions and handling financial affairs become seamless when the Donor travels abroad or faces health challenges. The POA ensures bills are paid and household expenses are covered without interruption.

Estate Planning: A well-structured POA guarantees that assets are managed and distributed precisely according to the Donor's intentions, preventing confusion and family disputes during vulnerable periods.

Business Planning: Companies rely on POAs to maintain operational continuity, allowing trusted employees to execute contracts and make critical decisions when key decision-makers are unavailable.

CONSEQUENCES OF NOT HAVING A POWER OF ATTORNEY

Without a POA, the following critical issues may arise:

- 1. Court Appointment Requirements:** In the event of mental incapacity, your family may need to apply to the Court to appoint a Committee of Person or Estate to manage your financial affairs. This process is both time-consuming and costly.
- 2. Financial Vulnerability:** In the event of illness or old age, finances may be vulnerable to abuse by the people around you who may take advantage of your compromised state.
- 3. Estate Disputes:** In the event of death, your estate may become subject to messy family disputes, creating long-lasting rifts between loved ones and depleting assets through legal battles.
- 4. Transaction Complications:** During a sale or purchase, the transaction may fail in the event of your death, marriage, mental disorder, unsoundness of mind or bankruptcy (collectively known as “trigger events”).

UNDERSTANDING MALAYSIA'S POA SYSTEM

Malaysia's Powers of Attorney Act 1949 establishes the fundamental framework, but several provisions require careful navigation.

Revocation Rules: Section 5 specifies that POAs terminate through written revocation by the Donor, written renunciation by the Donee, death or unsoundness of mind of either party or the Donor's bankruptcy.

Irrevocable POAs: Section 6 introduces a crucial protection mechanism. POAs can become irrevocable "in favour of a purchaser" when expressly stated and given for valuable consideration. The courts define valuable consideration as "some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other."

Time-Limited Irrevocability: Section 7 provides an alternative route to irrevocability through fixed time periods, even without valuable consideration, provided the arrangement favours a purchaser.

Critical Ambiguity: The phrase "in favour of the Purchaser" creates interpretive challenges. Many POAs serve purposes beyond sale transactions—such as bank account management—where no purchaser exists. As such, a POA has to be well-drafted by a legal professional who understands the complexities and is mindful of this ambiguity.

MALAYSIA'S POA LIMITATIONS AND SYSTEM GAPS

Despite their utility, Malaysian POAs face several structural limitations that other jurisdictions have addressed more comprehensively.

Medical Decision-Making Exclusion: Current POA frameworks restrict authority to financial and property matters, providing no mechanism for medical decision-making during mental incapacity periods.

Absence of Lasting Power of Attorney: Unlike the United Kingdom and Singapore, Malaysia has not implemented Lasting Power of Attorney (LPA) systems. LPAs specifically activate upon mental incapacity, addressing the growing needs of an ageing population facing increased rates of dementia and cognitive decline.

Technical Drafting Complexity: Improperly drafted POAs intended for irrevocability may fail to survive trigger events. Financial institutions and land authorities then subject these documents to intensive scrutiny and demanding procedural requirements, potentially blocking essential transactions.

Financial Burden Transfer: Without proper POA protection, younger family members often shoulder significant financial strain, advancing funds for elderly care while awaiting court resolution of authority issues.

Protracted Court Processes: Families endure lengthy and expensive legal proceedings to secure committee

appointments, draining resources that should support the incapacitated person's care.

THE STRATEGIC IMPORTANCE OF PROFESSIONAL POA PLANNING

The appointment of a trusted individual through a properly structured POA ensures smooth financial management during periods of personal inability. However, the legal complexities surrounding POA creation and implementation demand professional expertise.

Anyone seeking to exercise POA powers must possess a thorough understanding of relevant legislation and its practical applications. The intersection of the Powers of Attorney Act 1949, the Contracts Act 1950 and various procedural requirements creates a sophisticated legal landscape requiring skilled navigation.

Engaging qualified legal professionals becomes essential for POA alignment with personal intentions while addressing inherent legal complexities. Proper drafting minimises challenge risks and prevents costly litigation that could consume the very assets the POA was designed to protect. 

About the Writers:



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