The Official Gazette

(EXTRAORDINARY)

OF GUYANA

Published by the Authority of the Government

GEORGETOWN, MONDAY 22ND NOVEMBER, 2021

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GEORGETOWN, Demerara – Printed and Published every Saturday and on such Extraordinary Days as may be directed by the Government by Guyana National Printers Limited, 1 Public Road, La Penitence, Greater Georgetown.

MONDAY 22ND NOVEMBER, 2021

THE OFFICIAL GAZETTE 22ND NOVEMBER, 2021
LEGAL SUPPLEMENT — C

BILL No. 15 of 2021 *Monday 22nd November, 2021*

PARLIAMENT OFFICE
Public Buildings,
Georgetown,
Guyana.

22nd November, 2021.

The following Bill which will be introduced in the National Assembly is published for general information.

S.E. Isaacs,
Clerk of the National Assembly.

GUYANA

BILL No. 15 of 2021

POWERS OF ATTORNEY (AMENDMENT) BILL 2021

ARRANGEMENT OF SECTIONS

SECTION

1. Short title.
2. Insertion of new section 2A in the Principal Act.
3. Amendment of section 3 of the Principal Act.
4. Insertion of new sections 12, 13 and 14 in the Principal Act

A BILL

Intituled

AN ACT to amend the Powers of Attorney Act.

A.D. 2021 Enacted by the Parliament of Guyana:-

Short title.
Cap. 5:08

1. This Act, which amends the Powers of Attorney Act, may be cited as the Powers of Attorney (Amendment) Act 2021.

Insertion of new section 2A in the Principal Act.

2. (1) The Principal Act is amended by the insertion immediately after section 2, of the following section –

"Power of attorney.

2A. (1) An instrument creating a power of attorney shall be executed with the donor of the power and the donee of the power appearing personally together before a Public Notary, Magistrate or Justice of Peace, as the law may require, and the donor and donee shall each provide the Public Notary, Magistrate or Justice of Peace with two photograph identification documents that establish their identity and a photocopy of each of the documents.

(2) Where the donor is out of Guyana and the donee is in Guyana, the donor and the donee shall each appear personally before a Public Notary, Magistrate or Justice of Peace, as the law may require, in the country in which he is and execute the power of attorney, providing the Public Notary, Magistrate or Justice of Peace with two photograph identification documents that establish his identity and a photocopy of each of the documents.

(3) The power of attorney shall specify the name and number of every identification document of the donor and donee.

(4) The power of attorney shall be signed by the donor and donee in the presence of a Public Notary, Magistrate or Justice of Peace and two witnesses, and subscribed by the witnesses in the presence of each other before being signed, sealed or stamped by the Public Notary, Magistrate or Justice of Peace:

Provided that where a donor executes the power of attorney out of Guyana, a separate witness statement shall be given by one of the subscribing witnesses.

(5) The power of attorney shall not be registered, filed or recorded in the Deeds Registry, unless the power of attorney has attached to it copies of the two photograph identification documents, bio-data page in the case of a passport, of the donor and donee, and a separate witness statement given under subsection (4), which have been certified, signed and sealed or stamped by a Public Notary, Magistrate or Justice of Peace.

(6) For the purposes of this section identification documents include, a national identification card, a valid passport and a valid driver's licence.".

Amendment of section 3 of the Principal Act.

3. Section 3 of the Principal Act is amended as follows –

(a) by the substitution for the words "A power of attorney (other than", of the words "A power of attorney, including";

(b) by the substitution for the bracket immediately after the word "purpose", of a comma;

(c) by the insertion immediately after the words "Guyana,", of the following words –

"together with the attached copies of the two photograph identification documents of the donor and the donee and the witness statement referred to in section 2A(5),".

Insertion of new sections 12, 13 and 14 in the Principal Act.

4. The Principal Act is amended by the insertion immediately after section 11, of the following sections –

"Offences to dishonestly obtain and use power of attorney.

12. (1) A person shall not dishonestly obtain a power of attorney –

(a) to obtain financial advantage for the person or another person; or

(b) to cause loss to the principal or another person.

(2) An attorney under a power of attorney shall not dishonestly use the power of attorney –

(a) to obtain financial advantage for the attorney or another person; or

(b) to cause loss to the donor of the power or another person.

(3) An attorney who fails to comply with this subsection commits an offence and is liable on summary conviction to a fine of five million dollars and to

imprisonment for five years; and in the case of a body corporate ten million dollars.

(4) In this section a reference to a power of attorney includes a reference to a power of attorney that is invalid or has been revoked.

Other offences.

13. (1) If any Public Notary or Justice of Peace who is suspended or removed from practice or whose name is not on the register, whether for reward or not, makes, does or exercises or performs any act, matter or thing pertaining or belonging to the office, function or practice of Public Notary or Justice of Peace, the Public Notary or Justice of Peace commits an offence.

(2) A person who wilfully certifies or propounds any false statement or document, or who fraudulently, with intent to deceive, conceals, withholds or perverts any fact or document pertinent to the subject of a power attorney commits an offence.

(3) A person who fails to comply with any of the duties imposed on the person under section 2A commits an offence.

(4) A person who commits an offence under this section is liable on summary conviction to a fine of five million dollars and to imprisonment for five years.

Regulations.

14. The Minister may make regulations as may be necessary for the better carrying out of the provisions of this Act.".

Explanatory Memorandum

This Bill amends the Powers of Attorney Act, Cap. 5:08.

Clause 2 of the Bill inserts a new section 2A in the Act to provide for important procedures to be followed by a Public Notary, a Magistrate and a Justice of Peace where a law provides for them to have the jurisdiction in relation to execution of powers of attorney.

Section 2A provides for the donor of the power and the donee of the power to appear personally together before a Public Notary, Magistrate or Justice of Peace who is preparing the power of attorney. The donor and the donee shall each provide to the Public Notary, Magistrate or Justice of Peace two photograph identification documents that establish their identity. Identification documents include, a national identification card, a valid passport and a valid driver's licence. Where the donor is out of Guyana and the donee is in Guyana, each shall appear personally before a Public Notary, Magistrate or Justice of Peace in the country in which he is and execute the power of attorney providing the Public Notary, Magistrate or Justice of Peace with the identification documents required.

Section 2A requires certain features to be present in a power of attorney. The power of attorney shall specify the names and numbers of the identification documents of the donor and donee. The power of attorney shall be executed by the donor and the donee in the presence of the Public Notary, Magistrate or Justice of Peace and two witnesses, and subscribed by the witnesses before being signed, sealed or stamped by the Public Notary, Magistrate or Justice of Peace.

Certified and sealed or stamped copies of the photograph identification documents and a separate witness statement where the donor executed the power of attorney out of Guyana must be attached to the power of the attorney to be filed, in the Deeds Registry.

Clause 3 amends section 3 to make any power of attorney, including certain powers of attorney that were excepted, such as a special power providing for a few other acts only and for no other purpose, to be proved and filed as of record or proved and recorded in the Deeds Registry; any act done in pursuance of a power of attorney which has been proved and filed or proved or recorded shall be valid and the power shall be accepted as evidence in any suit, action or other proceeding.

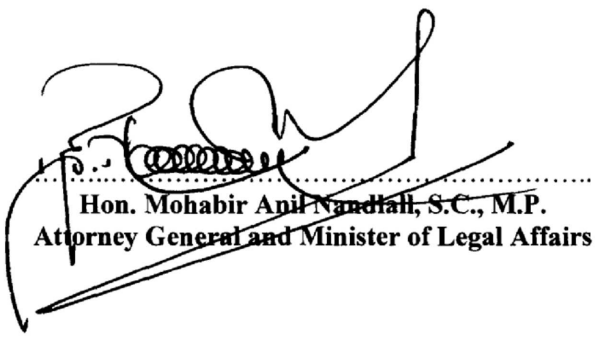
Clause 3 also amends section 3 to include filing and proving of the copies of two photograph identification documents of the donor and the donee and any witness statement that shall be attached to the power of attorney under section 2A.

Clause 4 amends the Act to insert new sections 12, 13 and 14.

Section 12 provides for the offences of dishonestly obtaining a power of attorney and dishonestly using a power of attorney.

Section 13 provides for other offences. A Public Notary or Justice of Peace commits an offence if he exercises or performs any act or thing pertaining to the office of Public Notary or Justice of Peace when he is suspended, unregistered or removed from office. It is an offence for a person to wilfully certify or propound any false statement or document, or who fraudulently, with intent to deceive, conceals, withholds or perverts any fact or document pertinent to the subject of a power attorney.

Section 14 gives power to the Minister to make regulations for the better carrying out of the provisions of this Act.



Hon. Mohabir Anil Nandlall, S.C., M.P.
Attorney General and Minister of Legal Affairs