

## UNIFORMITY OF POWERS OF ATTORNEY TO BE UTILIZED ABROAD (INTER-AMERICAN)

*Protocol opened for signature at the Pan American Union February 17,  
1940, and signed for the United States ad referendum October 3,  
1941*

*Senate advice and consent to ratification March 24, 1942*

*Ratified by the President of the United States April 3, 1942*

*Ratification of the United States deposited with the Pan American  
Union April 16, 1942*

*Entered into force February 6, 1941;<sup>1</sup> for the United States April 16,  
1942*

*Proclaimed by the President of the United States May 22, 1942*

56 Stat. 1376; Treaty Series 982

### PROTOCOL ON UNIFORMITY OF POWERS OF ATTORNEY WHICH ARE TO BE UTILIZED ABROAD

The Seventh International Conference of American States approved the following resolution (No. XLVIII) :

“The Seventh International Conference of American States, resolves :

1—That the Governing Board of the Pan American Union shall appoint a Commission of five experts, to draft a project for simplification and uniformity of powers of attorney, and the juridical personality of foreign companies, if such uniformity is possible. If such uniformity is not possible, the Commission shall suggest the most adequate procedure for reducing to a minimum both the number of different systems of legislation on these subjects and the reservations made to the several conventions.

2—The report should be issued in 1934, and be given to the Governing Board of the Pan American Union in order that it may submit it to the consideration of all the Governments, members of the Pan American Union, for the purposes indicated.”

The committee of experts appointed by the Governing Board of the Pan American Union pursuant to the above resolution prepared a draft of uniform legislation governing powers of attorney to be utilized abroad, which was submitted by the Governing Board to the governments, members of the

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<sup>1</sup> Date on which two states had become parties in accordance with terms of art. XII.

Pan American Union, and revised in accordance with the observations of the said governments.

A number of the governments of the American Republics have indicated that they are prepared to subscribe to the principles of the said draft, and to give them conventional expression, in the following terms:

#### ARTICLE I

Powers of attorney granted in the countries, comprising the Pan American Union, for utilization abroad, shall conform to the following rules:

1—If the power of attorney is executed by or on behalf of a natural person, the attesting official (notary, registrar, clerk of court, judge or any other official upon whom the law of the respective country confers such functions) shall certify from his own knowledge to the identity of the appearing party and to his legal capacity to execute the instrument.

2—If the power of attorney is executed in the name of a third person, or if it is delegated or if there is a substitution by the agent, the attesting official, in addition to certifying, in regard to the representative who executes the power of attorney, or delegates or makes a substitution, to the requirements mentioned in the foregoing paragraph, shall also certify that such representative has in fact the authority to represent the person in whose name he appears, and that this representation is legal according to such authentic documents as for this purpose are exhibited to said attesting official and which the latter shall mention specifically, giving their dates, and their origin or source.

3—If the power of attorney is executed in the name of a juridical person, in addition to the certification referred to in the foregoing paragraphs, the attesting official shall certify, with respect to the juridical person in whose name the power is executed, to its due organization, its home office, its present legal existence, and that the purposes for which the instrument is granted are within the scope of the objects or activities of the juridical person; which declarations shall be based on the documents which for that purpose are presented to the official, such as the instrument of organization, bylaws, resolutions of the board of directors or other governing body, and such other legal documents as shall substantiate the authority conferred. The attesting official shall specifically mention these documents, giving their dates and their origin.

#### ARTICLE II

The certification made by the attesting official pursuant to the provisions of the foregoing article, shall not be impugned except by proof to the contrary produced by the person challenging its accuracy.

For this purpose, it shall not be necessary to allege falsity of the document if the objection is founded only on an erroneous legal construction or interpretation made by the official in his certification.

## ARTICLE III

It shall be unnecessary for the grantee of a power of attorney to signify therein his acceptance of the mandate; such acceptance being conclusively presumed by the grantee's acting under the power.

## ARTICLE IV

Special powers of attorney to authorize acts of ownership granted in any of the countries of the Pan American Union, for use in another member country, must specify in concrete terms the nature of the powers conferred, to enable the grantee to exercise all the rights necessary for the proper execution of the power with respect to property as well as to the taking of all necessary steps before the tribunals or administrative authorities in defense thereof.

General powers of attorney for the administration of property shall be sufficient, if expressly granted with that general character, to empower the grantee to consummate all manner of administrative acts, including the prosecution and defense of law suits and administrative and judicial proceedings, in connection with the administration of the property.

General powers of attorney for lawsuits, collections or administrative or judicial proceedings, when so worded as to indicate that they confer all general powers and all such special powers as, according to the law, ordinarily require a special clause, shall be deemed to be granted without any limitation or restriction whatever.

The provisions of this article shall have the character of a special rule which shall prevail over such general rules to the contrary as the legislation of the respective country may establish.

## ARTICLE V

Powers of attorney granted in any of the member countries of the Pan American Union, which are executed in conformity with the rules of this Protocol, shall be given full faith and credit, provided, however, that they are legalized in accordance with the special rules governing legalization.

## ARTICLE VI

Powers of attorney granted abroad and in a foreign language may be translated into the language of the country of their destination and the translation incorporated as part of the text of the instrument thereof. In such case, the translation, so authorized by the grantor, shall be deemed accurate in every particular. The translation of the power of attorney may also be made in the country where the power is to be utilized, in accordance with the local usage or pertinent laws of such a country.

## ARTICLE VII

Powers granted in a foreign country do not require as a prerequisite their registration or protocolization thereof in designated offices. However, this rule will not prevail when the registration or protocolization of such instruments is required by the law as a special formality in specific cases.

## ARTICLE VIII

Any person who may, pursuant to the pertinent legislation, intervene or become a party in a judicial or administrative proceeding for the defense of his interests, may be represented by a volunteer, on condition, however, that such representative shall furnish the necessary legal authority in writing, or that, pending the due substantiation of his authority, such representative shall furnish bond, at the discretion of the competent tribunal or administrative authority, to respond for the costs or damages which his action may occasion.

## ARTICLE IX

In the case of powers of attorney, executed in any of the countries of the Pan American Union in accordance with the foregoing provisions, to be utilized in any other member country of the Union, notaries duly commissioned as such under the laws of their respective countries shall be deemed to have authority to exercise functions and powers equivalent to those accorded to native notaries by the laws and regulations of (name of country), without prejudice, however, to the necessity of protocolization of the instrument in the cases referred to in Article VII.

## ARTICLE X

What has been said in the foregoing articles with respect to notaries, shall apply with equal force to the authorities or officials that exercise notarial functions under the laws of their respective countries.

## ARTICLE XI

The original of the present Protocol in Spanish, Portuguese, English and French, under the present date shall be deposited in the Pan American Union and opened for signature by the States, members of the Pan American Union.

## ARTICLE XII

The present Protocol is operative as respects each High Contracting Party on the date of signature by such Party. It shall be open for signature on behalf of any of the States, members of the Pan American Union, and shall remain operative indefinitely, but any Party may terminate its own obligations hereunder three months after it has given to the Pan American Union notice of such intention.

Notwithstanding the stipulations of the foregoing paragraph any State desiring to do so may sign the present Protocol *AD REFERENDUM*, which Protocol in this case, shall not take effect, with respect to such State, until after the deposit of the instrument of ratification, in conformity with its constitutional procedure.

### ARTICLE XIII

Any State desiring to approve the present Protocol with modifications may indicate, when signing the Protocol, the form in which the instrument will be given effect within its territory.

In witness whereof, the undersigned Plenipotentiaries, having deposited their full powers found to be in due and proper form, sign this Protocol on behalf of their respective governments, and affix thereto their seals on the dates appearing opposite their signatures.

For Venezuela:

The Representative of Venezuela signs the present Protocol with the following modification of section 1 of the first article:

"1.—If the power of attorney is executed in his own behalf by a natural person, the attesting official (notary, registrar, clerk of court, judge, or any other official upon whom the law of the respective country confers such function) shall certify that he knows the person executing the instrument and that he has the legal capacity to execute it, according to the documents he has produced" [translation].

DIÓGENES ESCALANTE [SEAL]  
February 20, 1940

For Panama:

JORGE E. BOYD [SEAL]  
*ad referendum* April 10, 1940

For El Salvador:

HÉCTOR DAVID CASTRO [SEAL]  
*ad referendum*<sup>3</sup> May 21, 1940

For Colombia:

"The Plenipotentiary of Colombia signs the Protocol on the Uniformity of Powers of Attorney *ad referendum* to approval by the National Congress, making the reservation that Colombian legislation set forth in article 2590 of the Civil Code provides that notaries are responsible only for the form and not for the substance of the acts and contracts which they authenticate" [translation].

GABRIEL TURBAY [SEAL]  
May 25, 1940

For Nicaragua:

LEÓN DE BAYLE [SEAL]<sup>1</sup>  
*ad referendum* May 27, 1940

<sup>3</sup> The instrument of ratification deposited by El Salvador on Feb. 6, 1941, contained the following reservations:

"(a) Article IX, as respects its application in El Salvador, shall be considered as reading as follows:

'Article IX.—Powers of attorney executed in any of the countries of the Pan American Union in accordance with the foregoing provisions and in conformity with the laws of the country of origin, to be utilized in any other country of the Union, shall be considered as having been executed before a competent notary of the country in which they may be utilized, without prejudice, however, to the necessity of protocolization of the instrument in the cases referred to in article VII.'

(b) The reservation is made to article VIII that unauthorized action by the attorney, as plaintiff or defendant, cannot be admitted in judicial or administrative matters for which Salvadoran laws require that representation be accredited by a special power of attorney" [translation].

For Brazil:

CARLOS MARTINE PEREIRA [SEAL]  
E SOUSA  
September 6, 1940

For Bolivia:

The Plenipotentiary of Bolivia signs the present Protocol with the following clarification of article I, section 2:

"For the correct application of article I, section 2, of the Protocol on the Uniformity of Powers of Attorney in the territory of the Republic of Bolivia it is necessary that the notary or official charged with the authentication of documents insert in the powers of attorney which are executed by delegation or by substitution the integral text of the original powers of attorney and of all those documents which prove the legal capacity of the person conferring the power of attorney" [translation].

LUIS GUACHALLA [SEAL]  
*ad referendum* September 26, 1940

For the United States of America:

CORDELL HULL [SEAL]  
*ad referendum* October 3, 1941

For Mexico:

The Government of the United Mexican States, in accepting the provisions of Article IV, declares expressly that for-

eigners who, in order to perform certain acts, are required to make the agreement or waiver referred to in section 1, Article 27 of the political constitution of the United Mexican States, must grant a special power of attorney, expressly specifying the said agreement and waiver in one of the clauses. Section 1 of Article 27 of the Constitution reads as follows: "Only Mexicans by birth or by naturalization and Mexican companies have the right to acquire the ownership of lands, waters, and their accessions, or to obtain concessions for the exploitation of mines, water, or combustible minerals in the Mexican Republic. The State may grant the same right to foreigners provided they agree before the Department of Foreign Relations to be considered as nationals with respect to such property and not to invoke, therefore, the protection of their Government with respect to the same; under penalty of forfeiting to the nation, in the event that the agreement is violated, any property which they may have acquired by virtue of the same. Under no circumstances may foreigners acquire the direct ownership of lands and waters in a strip one hundred kilometers wide along the borders and fifty kilometers wide along the coast" [translation]. -

LUIS QUINTANILLA [SEAL]  
*ad referendum* December 15, 1951