COMPANY POWER OF ATTORNEY INFORMATION BROCHURE

BARKER & BARKER

SERVING CANBERRA SINCE 1982

Ground Floor, AMP Building
1 Hobart Place
Canberra City

(02) 6248 7255
barker@barkerlaw.com.au

www.barkerlaw.com.au

What is a Company Power of Attorney?

A Company Power of Attorney (CPOA) is a legal document that allows a company to authorise a person or persons (the attorney/s) to act on its behalf. This is separate from a personal power of attorney, which only covers your individual affairs and does not extend to company matters.

Why Consider a Company Power of Attorney in Your Estate Planning?

If you are a director and/or shareholder of a private company, a CPOA can be a vital part of your estate plan. It helps ensure that your company can continue to operate smoothly if you are unable to act due to absence, illness, incapacity, or death.

Key Benefits of a Company Power of Attorney

- **Business Continuity -** Ensures your company can continue to transact business, sign documents, and manage its affairs if you are unavailable or incapacitated.
- **Bridging Gaps During Estate Administration -** Allows the company to function while your estate is being administered, especially if you are the sole director or shareholder.
- **Delegation of Specific Powers -** You can specify which powers the attorney will have, such as managing bank accounts, signing contracts, or handling property transactions.
- **Risk Management:** A CPOA is an important risk management tool to avoid "signatory limbo" and ensure long-term stewardship of your company.
- **Limitations of Personal Powers of Attorney -** Your personal power of attorney does not extend to your company's affairs. Only a CPOA can authorise someone to act for the company.

When Should You Consider a Company Power of Attorney?

- If you are a sole director and/or shareholder of a company.
- If your company holds significant assets or is integral to your estate.
- If you want to ensure your business can continue without interruption in the event of your incapacity or death.
- If your company structure requires two signatures for transactions (as per section 127 of the *Corporations Act 2001* (Cth)), and you want to avoid business paralysis if one director is unavailable.

How is a Company Power of Attorney Created?

- The company, through its directors, formally appoints an attorney by executing a CPOA document.
- The CPOA must comply with the company's constitution and relevant laws.
- The powers granted can be general or limited to specific tasks (e.g., routine transactions, specific projects, or general management).

Important Considerations

- The attorney cannot act as a director unless formally appointed as such.
- Directors remain liable for acts by the attorney; consider appointing attorneys jointly for accountability.
- The CPOA ceases if the company is wound up or the appointment is revoked.
- The CPOA should be reviewed regularly and updated as your circumstances or company structure change.

Commencement of Power of Attorney

You may choose for your Power of Attorney to:

- Operate immediately, or
- Only come into effect if you lose mental capacity.

Considerations:

- Immediate commencement allows your attorney to act if you are physically incapacitated or unavailable.
- If you restrict commencement to loss of capacity, your attorney may need to prove incapacity, which can cause delays.
- Some institutions may not accept a Power of Attorney with restrictive conditions without extensive evidence.

Revocation

- You can revoke your CPOA at any time while you have capacity.
- Notify your attorney and any relevant third parties (e.g., banks, land registries) in writing and retrieve all copies of the document.
- If the original was registered, register the revocation as well.

Interaction with Wills and Estate Planning

- Attorneys cannot make or alter your will.
- A will only comes into operation after death; a CPOA operates during incapacity or before an executor can act.
- Review your Power of Attorney, will, and other estate planning documents together to ensure consistency and avoid conflicts between attorneys and executors.

BARKER & BARKER
SERVING CANBERRA SINCE 1982

Ground Floor, AMP Building, 1 Hobart Place, Canberra City

(02) 6248 7255 | barker@barkerlaw.com.au