

Chapter 260.  
***Mercantile Act 1953.***

Certified on: / /20 .



INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 260.

***Mercantile Act 1953.***

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

***Mercantile Act 1953,***

Being an Act relating to mercantile matters.

**PART I. – PRELIMINARY.**

**1. INTERPRETATION.**

In this Act, unless the contrary intention appears—

“**the commencement date**” means 9 September 1954 (being the date of commencement of the pre-Independence *Mercantile Act 1953*);

“**conveyance**” includes a mortgage, charge, lease, assent, vesting declaration, disclaimer, release, surrender, extinguishment and every other assurance of property or of an interest in any property by any instrument, but does not include a will;

“**disposition**” includes—

(a) a conveyance; and

(b) a devise, bequest or an appointment of property contained in a will;

“**instrument**” includes a deed and a will;

“**property**” includes a thing in action and an interest in property;

“**valuable consideration**” includes marriage, but does not include a nominal consideration in money.

**PART II. – ASSIGNMENT OF PERSONALTY.****2. CONVEYANCE BY A PERSON TO HIMSELF.**

In a conveyance, personal property, including a chattel real, may be conveyed by a person to himself jointly with another person in the same way as it might be conveyed by him to another person.

**3. ASSIGNMENT OF DEBTS AND THINGS IN ACTION.**

(1) Subject to Subsection (2), a written absolute assignment under the hand of the assignor (not purporting to be by way of charge only) of a debt or other legal thing in action, of which express written notice has been given to the debtor, trustee or other person from whom the assignor would have been entitled to claim the debt or thing in action is, and shall be deemed always to have been, effectual in law (subject to all equities having priority over the right of the assignee) to pass and transfer from the date of the notice—

- (a) the legal right to the debt or thing in action; and
- (b) all legal and other remedies for the debt or thing in action; and
- (c) the power to give a good discharge for the debt or thing in action without the concurrence of the assignor.

(2) If the debtor, trustee or other person liable in respect of a debt or thing in action referred to in Subsection (1) has notice—

- (a) that the assignment is disputed by the assignor or a person claiming under him; or
- (b) of any other opposing or conflicting claims to the debt or thing in action,

he may, if he thinks fit—

- (c) call on the persons making claim to the debt or thing in action to interplead concerning it; or
- (d) pay the debt or other thing in action into court under the provisions of any Act for the relief of trustees.

**PART III. – POWERS OF ATTORNEY.**

**4. POWERS OF ATTORNEY.**

(1) In this section, “**revocation**” includes the determination of a power otherwise than by the expiration of a fixed period of time.

(2) This section applies to powers of attorney whenever executed and whether executed in or out of the country.

(3) Subject to any stipulation to the contrary in the instrument creating the power, a power of attorney so far as concerns an act or thing done or suffered in good faith, continues in force until notice—

- (a) of the death of the donor of the power; or
- (b) of some other revocation of the power,

has been received by the donee of the power.

(4) An act or thing within the scope of the power done or suffered in good faith by the donee of the power after the death or other revocation referred to in Subsection (3) and before notice of the death or other revocation has been received by him, is as effectual in all respects as if the death or other revocation had not happened or been made.

(5) A statutory declaration by the donee of the power in Form 1, made at or after the time when the act or thing was done or suffered, is in favour of all persons dealing with the donee of the power in good faith and for valuable consideration without notice of the death or other revocation, conclusive proof of the non-revocation at the time when the act or thing was done or suffered.

(6) Where the donee of power is a corporation aggregate the declaration may be made by an officer of the corporation appointed for the purpose generally or in the particular instance by the board of directors, council or other governing body by resolution or otherwise.

(7) Where a declaration referred to in Subsection (6) contains a statement that the declarant is an officer of the corporation appointed for the purpose of making the declaration, that statement is conclusive evidence in favour of the persons mentioned in Subsection (5).

(8) Where an instrument made after the commencement date is made or purports to be made in exercise of a power of attorney, a statement that the donee of the power has no notice of the revocation of the power of attorney at the time of the making by him of the instrument, contained—

- (a) in the body of the instrument; or
- (b) in a memorandum endorsed on the instrument signed by the donee of the power at the time of making the instrument and stating the date and place of signature, the signature being attested by one witness,

has the same effect as the statutory declaration referred to in Subsection (5).

(9) A donee of a power of attorney or a person purporting to act as a substitute, delegate or sub-attorney who—

- (a) signs an instrument or memorandum referred to in Subsection (8) knowing the statement referred to in that subsection to be untrue; or
- (b) falsely states in the memorandum the date of the signature to the memorandum,

is guilty of an offence.

Penalty: Imprisonment for a term not exceeding four years.



**PART IV. – SATISFIED SECURITIES.**

**5. EFFECT OF DISCHARGE OF LIABILITY BY SURETY.**

(1) A person who–

- (a) being surety for the debt or duty of another; or
- (b) being liable with another for a debt or duty,

pays the debt or performs the duty is entitled to have assigned to him or to a trustee for him every judgement, specialty or other security that is held by the creditor in respect of the debt or duty, whether the judgement, specialty or other security is or is not deemed at law to have been satisfied by the payment of the debt or performance of the duty.

(2) A person referred to in Subsection (1) is entitled–

- (a) to stand in the place of the creditor; and
- (b) to use all the remedies of the creditor; and
- (c) if need be and on a proper indemnity, to use the name of the creditor,

in any proceedings in order to obtain from the principal debtor or any co-surety, co-contractor or co-debtor, as the case may be, indemnification for the advances made and loss sustained, by the person who has paid the debt or performed the duty.

(3) A payment or performance made under Subsection (2) by a surety is not pleadable in bar of any proceeding by him referred to in that subsection.

(4) A co-surety, co-contractor or co-debtor is not entitled to recover under this section from any other co-surety, co-contractor or co-debtor, more than the proportion for which, as between those parties, the last-mentioned person is justly liable.

**PART V. – INSTRUMENTS CONNECTED WITH GAMING OR WAGERING.**

**6. ILLEGAL CONSIDERATION.**

A bill, note, cheque or mortgage drawn, accepted, made, given, granted or entered into or executed by a person where the whole or a part of the consideration is–

- (a) for any money or other valuable thing won by gaming or wagering; or
- (b) for the reimbursing or repaying of money knowingly lent or advanced for gaming or wagering; or
- (c) lent or advanced at the time and place of any such gaming or wagering to a person gaming or wagering,

shall be deemed to have been drawn, accepted, made, given, granted or entered into or executed for an illegal consideration.

**PART VI. – VOIDABLE DISPOSITIONS.**

**7. CONVEYANCES WITH INTENT TO DEFRAUD CREDITORS.**

(1) Subject to this section, a conveyance of property made with intent to defraud creditors is voidable, at the instance of any person prejudiced by it.

(2) This section does not affect the operation of the law of insolvency.

(3) This section does not extend to an estate or interest in property conveyed–

(a) for valuable consideration; or

(b) on good consideration,

to a person not having, at the time of the conveyance, notice of the intent to defraud creditors.

**8. VOLUNTARY DISPOSITIONS OF LAND WITH INTENT TO DEFRAUD.**

(1) In this section, “**disposition**” includes every mode of disposition referred to in the *Land Registration Act 1981*.

(2) A voluntary disposition of land made with intent to defraud a subsequent purchaser is voidable at the instance of that purchaser.

(3) For the purposes of this section, a voluntary disposition shall not be deemed to have been made with intent to defraud by reason only that a subsequent conveyance for valuable consideration was made, if the subsequent conveyance was made after the commencement date.

**9. ACQUISITIONS OF REVERSIONS.**

(1) In this section, “**reversionary interest**” includes an expectancy or possibility.

(2) An acquisition made in good faith, without fraud or unfair dealing, of a reversionary interest in property, for money or money’s worth, is not liable to be opened or set aside merely on the ground of undervalue.

(3) This section does not affect the jurisdiction of a court to set aside or modify an unconscionable bargain.

**SCHEDULE 1 – STATUTORY DECLARATION OF NON-REVOCAATION OF POWER OF ATTORNEY.**

Sec. 4(5). Form 1.

I, *(name, address and occupation of person making the declaration)* do solemnly and sincerely declare–

- (1) I am the attorney named in power of attorney *(or deed of substitution executed under power of attorney)* *(insert particulars of power of attorney and deed of substitution, if any)*, by virtue of which I have *(state nature of act or thing done or suffered)*.
- (2) I have not received any notice or information of the revocation of the power of attorney *(or deed of substitution)* by death, lunacy, unsoundness of mind, insolvency, act of the donor or otherwise.

And I make this solemn declaration by virtue of the *Oaths, Affirmations and Statutory Declarations Act* conscientiously believing the statements contained in it to be true in every particular.

*(Signature of person making the declaration.)*

Declared at ... , 20...

Before me–

*(Signature of person before whom the declaration is made.)*

*(Title of person before whom the declaration is made.)*

NOTE.–Any person who wilfully makes a false statement in a statutory declaration is guilty of an offence.

Office of Legislative Counsel, PNG