

Introduction

The purpose of study is to explain the Power of Attorney as legal document which gives a person the power to manage and solve financial and legal affairs on someone else's behalf. A power of attorney in common law systems or in civil law systems is an authorization to act on someone else's behalf in a legal or business matter. As a legal term the power of attorney has been in our life for a long time. Now its use became more widespread.

A power of attorney is a legal document that allows someone else to act on your behalf in matters you specify in it. You can also use this document to authorize an individual to receive personal and private information in many fields. This document gives the person, you choose, the power to manage and solve your financial and legal affairs while you are alive. It must be signed by you if you have the required legal capacity to give clear and concise instructions. The appointment may be for a fixed period and can be revoked by you at any time providing you still have the legal capacity to do so.

The public policy of power of attorney is representation: a transaction made by one person in the name of another person by virtue of a legal power based upon a power of attorney.

The definition of power of attorney is in the RA Civil Code¹: ‘‘A power of attorney is a written authorization issued by one person to another person for representation before third persons’’, it means that a power of attorney is a document in which you state that you give someone else the authority to make a decision and act on your behalf.

Theoretically there are, at a basic level, two types of powers of attorney:

- A "general" power of attorney – may not exceed three years in scope and duration, and permits the named individual to act as your legal representative in relation to financial and legal matters.

¹ Civil Code RA art 321

- A "specific" power of attorney - imposes limits upon the named representative, and may restrict the scope of that person's powers to a single type of conduct or a single transaction.

Either type of power of attorney may be limited in its duration. That is, the document can specify a date after which the power of attorney will no longer be valid. According to the legislation of the RA the term of a power of attorney may not exceed three years. If the term is not indicated in the power of attorney, it shall remain in force for a year from the day of its making. A power of attorney in which the date of its making is not indicated is void.²

A written authorization means to sign document, and this will give the other person a power. Today thousands of businesses across the world are saving time and money by replacing paper processes with electronic signature. Like a traditional pen and paper process, an electronic signature permanently binds a person's consent to the contents of a document using electronic security methods to an electronic tamper-seal. Once a document is electronically signed, deleting the signature, or transferring it to another document, or altering the document's contents, returns the electronic signature invalid. This electronic tamper-seal ensures both parties that the electronically signed document is unaltered from the moment that the prospective insured signs it.³

According to art. 296 of the RA Civil Code “the use in the concluding a transaction of facsimile reproduction of a signature with the assistance of means of mechanical or other copying, electronic digital signature, or other analogue of an actual handwritten signature is allowed in cases and by the procedure provided by a statute, other legal acts, or agreement of the parties.” In spite of the fact that the Civil Code authorizes the use of electronic signatures in cases of mutual agreement of the parties, the need for statutory regulation of the use of electronic signatures for power of attorney is essential.

² Civil code RA art 323

³ EC Official Journal, as Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures (OJ No L 13 p.12 19/1/2000).

Based on Civil Code RA the power of attorney must be in writing. But it may be oral too—such as asking someone else to sign your name on a cheque because your arm is broken. Many institutions, such as courts, hospitals, banks require a power of attorney to be in writing before they will honor it, and they usually want to keep an original for their records.

Power of attorney is a document which we can use during legal proceedings, business transactions in case of absence of one party, it gives the power to manage and solve financial, legal affairs on someone else's behalf. For the power of attorney to be effective you must be competent to give this authority, that is, you must know and understand what types of decisions need to be made.

According to the art. 24 of Civil Code of RA the capacity of a citizen by his/her actions to acquire and exercise civil law rights, to create for himself/herself civil law duties and to fulfill them arises in full with the attainment of majority, on the attainment of the age of eighteen. Additionally, it is defined that minor who has attained the age of sixteen may be declared of full dispositive capacity if he/she works under a labor contract or, with the agreement of his parents, adoptive parents, or curator, conducts entrepreneurial activity⁴.

A power of attorney for making transactions requiring notarial form must be notarization with the exception of cases provided by Civil code of RA: powers of attorney of military service personnel and of other persons who are being treated in military hospitals, sanatoria, and other military therapeutic institutions authenticated by the head of such an institution, by his deputy for the medical section, or by a senior or duty physician; powers of attorney of military service personnel and, in locations of stationing of military units, groups, institutions, and military training schools, where there are no notarial offices nor other agencies conducting notarial operations; powers of attorney of persons who are in places of deprivation of freedom authenticated by the head of the respective place of deprivation of freedom powers of attorney of adult citizens

⁴ Civil Code RA art.24

with dispositive capacity who are in institutions for social protection of the public, authenticated by the administration of this institution or the head of the respective agency for social protection of the public⁵.

Therefore Power of attorney is a legal document which facilitates to act on someone else's behalf in a legal or business matter.

Private Interests

In this transaction the person appointed is usually called a representative, while the person making the power of attorney appointment is called the represented person.

The person designated to be the representative assumes certain responsibilities. First and foremost, he/she is obligated to act in represented person's best interest. The representative must always follow the represented person's directions and is "fiduciary" which means that the agent must act with the highest degree of good faith in behalf of their person represented. If the representative is being paid to act for the person represented, the contract is a separate matter from the power of attorney itself, so if that contract is in writing, it is a separate document, should be kept private between them, whereas the power of attorney is intended to be shown to various other people. This document must be notarized.

As follows from the term "power of attorney" one of the elements in this transaction is the trust between actors. So more important is to give Power of Attorney to a trustworthy person such as your parents, children, a relative or a friend.

From the legal point of view delivery of the power of attorney is a unilateral transaction⁶. That's why the will of represented is enough. But of course it dose not oblige to take function of representation. The representative has the right to refuse the power of attorney that will cause its termination. It can be stopped at any moment, irrespective of validity of the power of attorney, and also that, the representative has had time to realize the powers transferred or not.

⁵ Civil Code RA art 321.3

⁶ Гражданское право. А.П.Сергеев, Ю.К. Толстой; М.:- 2004

The power of attorney is valid as long as you are alive. As soon as you die this person will lose the power of attorney.⁷

The causes of termination can be also expiration of the term of the power of attorney; taking the actions provided by the power of attorney; revocation of the power of attorney by the person who gave it; renunciation by the person to whom the power of attorney was given; termination of the legal person to whom the power of attorney was given; termination of the legal entity to whose name the power of attorney was given.

The person to whom a power of attorney was given must personally take actions for which it was authorized. But this person can delegate it also to another person, if so authorized by the power of attorney or compelled by the force of circumstances, for the protection of the interests of the one who gave the power of attorney.

One who has transferred powers to another person must notify of this the one who gave the power of the attorney and report to him/her the necessary information on the person to whom the powers were transferred. If one of the actors is a legal entity a power of attorney shall be issued under the signature of its manager or other person authorized for this by the charter, with an attachment of the seal of this organization⁸.

The representative must execute a power of attorney for as long as he is entrusted with it and is liable for any damage arising as a result of failure to act in that capacity. Thus he/she assumes certain duties and responsibilities the most important obligation of the representative is to act in best interest and follow instructions.

A power of attorney for making transactions requiring notarial form must be notarialy authenticated. It means that notary is an actor too, because notarization is very important for making some transactions⁹.

⁷ Civil Code RA art 324

⁸ Civil Code RA art. 323

⁹ Civil Code Ra art.299

The Power of attorney authenticated by the head of military hospitals, sanatoria, and other military therapeutic institutions, the head of the respective place of deprivation of freedom, the head of the respective agency for social protection of the public are equated to notarially authenticated powers of attorney. Thus the head of such kind of institutions are also actors like notary.

Armenian Legal Framework

The Constitution of Republic of Armenia defines the principals of legal regulation in the territory of Republic of Armenia¹⁰. It is the legal base for the legislation of the RA.

The Constitution of the RA has the highest juridical force and its norms operate directly. The laws and other legal acts are adopted on the bases of the Constitution and shall not contradict the Constitution. The law as well as other legal acts recognized as contradicting the Constitution does not have juridical force.

A law regulates the more important, characteristic and stable social relationships and is adopted in accordance with the Constitution. It may regulate any relationship and may be adopted in the form of Codes. Code is a law laying out all or most of the fundamental norms regulating the homogeneous public relationships in a systematic and regulated fashion¹¹. All the other laws of the Republic of Armenia in the field of social relationships regulated by the Code shall comply with the Codes¹².

The power of attorney is an instrument containing an authorization for one to act as a representative. Armenian Legislation is regulating this instrument and the legal sources for include:

- RA Civil Code Chapter 19: Art 321”Power of Attorney”, Art 322 “Term of a Power of Attorney”, art 323” Delegation of Power of Attorney”, art. 324”Termination of a Power of Attorney”, art 325”Consequences of Termination of a Power of Attorney”.

¹⁰ Law on legal acts of RA

¹¹ Law on legal acts of RA

¹² Law on legal acts of RA.

Other legal acts which are related to the power of attorney as a legal instrument are as follows:

- On notariat of RA; 2001.12.04
- On juridical practice of invalid transaction affairs; the Council of Court Chairmen, 2001.09.26 # 43

The key provisions of the Civil Code RA

Art 321 "Power of Attorney" gives the definition of power of attorney, its notarization and the exception of cases which are equated to notarized power of attorney, defines the way of giving a power of attorney by legal person, and the way of sending a power of attorney by telegraph and other forms of communication.

Art 322 "The term of power of attorney". The term of power of attorney may not exceed three years. If the term is not indicated in the power of attorney, it shall remain in force for a year from the day of its making. A power of attorney in which the date of its making is not indicated is void.

Art 323 "Delegation of Power of Attorney". The person to whom a power of attorney was given must personally take actions for which it was authorized, But this person can also delegate authority to another person. One who has transferred powers to another person must notify the one who gave the power of the attorney and report to him/her the necessary information on the person to whom the powers were transferred. If one of the actors is a legal entity a power of attorney shall be issued under the signature of its manager or other person authorized for this by the charter, with an attachment of the seal of this organization.

Art. 324 "Termination of a Power of Attorney" The result of termination can be expiration of the term of the power of attorney; taking the actions provided by the power of attorney; revocation of the power of attorney by the person who gave it; renunciation by the person to whom the power of attorney was given; termination of the legal person to whom the power of attorney was given; termination of the legal person to whose name the power of attorney was given, death of the citizen who gave the power of attorney or whom was given .

Art 325 "Consequences of Termination of a Power of Attorney".

1. A person who has issued a power of attorney and thereafter revokes it is obligated to notify the person to whom the power of attorney was given about the revocation and also to notify third persons known to him for representation before whom the power of attorney was given. The same obligation is imposed upon the legal successors of the person who gave the power of attorney, in cases of its termination on the bases provided in subparagraphs 5 and 7 of Paragraph 1 of Article 351 of the present Code.

2. The rights and duties that have arisen as the result of actions of the person to whom a power of attorney was given, before this person knew or should have known of its termination remain in force for the one who issued the power of attorney and his legal successors with respect to third persons. This rule is not applied if the third person knew or should have known that the effect of the power of attorney was terminated.

3. Upon the termination of the power of attorney, the person to whom it was given or his legal successor is obligated to return the power of attorney immediately.

4. With the termination of a power of attorney a delegation of the power of attorney loses its force.

Actors involved with the study: – Notary, the head of military hospitals, sanatoria, and other military therapeutic institutions, the head of the place of deprivation of freedom, the head of agency for social protection of the public.

Public Institutions involved with the study: - Notary's Offices, military hospitals, sanatorias, and other military therapeutic institutions, the places of deprivation of freedom, agencies for social protection of the public and courts.

Case Studies

I. Interview

Power of attorney is very interesting legal instrument. It can be used in many cases such as managing and solving financial and legal affairs.

I interviewed lawyer who has been a respective in many cases. She spoke about the power of attorney, its actors and explained the ways of monitoring of representative.

- Please explain what is “Power of Attorney” and its role today?
- Sometimes in life, a situation will arise where the mental or physical capacities of a person are reduced to the point where he can no longer make decisions for himself. Daily decisions must be left in the hands of another trusted person. Or perhaps another situation comes to bear where a person is unable to personally attend to a specific legal affair or piece of business, and wishes to have a designated representative handle the affair or transaction on his behalf. In this case, what's needed is a Power of Attorney as a legal instrument allows one person to designate another person to handle the business, financial and legal affairs of the person signing the any legal form, either for a specific function or for overall day-to-day needs. Today power of attorney’s use became more intensive and helps to make our life easier.
- Who are the parties, and what rights do they have?
- The person who has the powers is called an «representative or attorney" The signer is the "the represented person" Merely because the word "attorney" is used does not mean that the agent must be a lawyer. The Agent named in a Power of Attorney is your representative, not your "boss." As long as you have the legal capacity to make decisions, you can direct your representative to do only those things that you want done. It means even if the represented person has delegated authority to the representative through a power of attorney, they can still make important decisions for themselves. But, their representative may act for them as well. Their representatives must

follow directions as long as they are capable of making decisions for themselves. A power of attorney is simply one way to share authority with someone else. If the represented person's decisions conflict with those of the representative, the represented person's decision will govern, assuming that the representative confers with the represented person prior to taking an action. It is important be aware that if the represented person has acted on the representative's behalf and acted within the scope of authority granted by the power of attorney, then the represented person may be obligated by the terms and conditions of his actions. If the representative does not respect the represented person's wishes, the represented person should revoke the power of attorney.

- How can the power of attorney be effective?
- For the power of attorney to be effective the represented person must be competent to give authority, that is, he/she must know and understand what types of decisions need to be made. A person who is mentally incapacitated is not capable of meeting these requirements.
- Many people think that power of attorney is something like will. Is this true?
- I am sure that not every body in our society knows that a power of attorney ends upon the death of the principal. Power of attorney is not a substitute for a will. They are different legal instruments. It is very important to differ one from another.
- The last question. What do you think about monitoring? Can the represented person monitor the representative?
- To monitor the actions of the representative is very difficult. There is no official or government monitoring of representative acting pursuant to Power of Attorney. That is the responsibility of the represented person. It is important to insist that your representative keep accurate records of all transactions completed for you, and to provide you with periodic accountings. You might also direct your representative to give an accounting to a third party in the event you are unable to review the accounting yourself.

II Cases

1. During research I found very an interesting case *Sikorski v. Sikorski* (N.J. Super. Ct. Law Div., No. L-91-5174). In this case a woman had obtained a power of attorney from her brother-in-law while he was on his deathbed in the hospital. Although the power made no mention of making gift, the woman used the power to withdraw the represented person's money from his bank accounts and cash in his certificates of deposit so that the funds could be deposited in her own and her husband's own bank accounts before the represented person's death. The represented person's died intestate. After the represented person's death, his estate and the other beneficiaries of the estate, who were the decedent's other brother and two sisters, filed suit for return of the decedent's assets. The woman testified at deposition that the decedent had told her in private during his final hospitalization that he wanted all of his money to go to the woman's husband and not to any of his other siblings. According to the woman, the decedent instructed her to obtain a power of attorney to do "what she had to do" to effect his plan. The issue arose as to whether the woman's gifts to herself and her husband were invalid as a matter of law.

The Court held that today any purported oral authorization was ineffective. The power to make any gift must be expressly granted in the instrument itself... It is for the common security of mankind...that gifts procured by agents...from their represented person, should be scrutinized with a close and vigilant suspicion. Therefore, in order to avoid fraud and abuse, we adopt a rule barring a gift by a representative himself or a third party absent clear intent to the contrary..." Courts in some states have held that representative may not make gifts to themselves unless there is clear intent in writing from the represented persons allowing the gifts. *McCarter v. Willis*, 383 S.E.2nd 252 (S.C. App. 1989); *Fletcher v. Mathew*, 448 N.W.2nd 576 (Neb. 1989). Therefore a representative must act in the utmost good faith and undivided loyalty toward the represented persons, and must act in accordance with the highest represented persons of morality, fidelity, loyalty and fair dealing.

2. On August 14, 2006 at an open court session in the Court of Cassation for Civil Cases, based on the claim presented by the plaintiff K.Sargsyan who brought a suit against the E. Sargsyan, her brother. The civil case on the claim to declare the power of attorney invalid and return of the decedent's house. During the court hearing in the Courts of First Instance of Kentron and Nork-Marash the plaintiff asserted that the power of attorney was invalid according to Art. 322.1 Civil Code RA. According to the law the representative, her brother may not make gifts to himself because the power of attorney was void. The court of First Instance of Kentron and Nork-Marash rejected petition in 05.10.2006. The Court of Appeal for Civil Cases rejected petition in 11.05.2006. According to the Court of Cassation for Civil Cases there are not enough grounds for the rejection of petition, it is clear that power of attorney date is not indicated. Therefore the Cassation court held that power of attorney was unlawful according to Civil Code art 322.1” A power of attorney in which the date of its making is not indicated is void”. According to Art 236-239 of the Civil Procedure Code the case must be returned to the Appeal Court. Power of attorney is a very important instrument during the transactions. You must pay attention to every thing even “comma” can play an important role and change the issue of the case.

Steps

The main steps for power attorney are as follows:

1. Clearly understand what is a power of attorney

A power of attorney is a document in which you state that you give someone else the authority to make certain decisions and act on your behalf.

2. To differ the categories of power of attorney.

Power of Attorney is divided into two categories:

General Power of Attorney: with this document the person concerned entrusts the management of all of his/her present and future affairs to the attorney or agent. The General Power of Attorney is issued for a limited time. It will not exceed three years.

Special Power of Attorney: with this document the person concerned entrusts the attorney or agent with the management of part of his/her affairs. The Special Power of Attorney is valid only up to the conclusion of the specified affair.

3. To differ who are the parties to a power of attorney

The person who gives the power of attorney is called the represented person. The person who receives the power is called the representative.

4. To know who can give a power of attorney

Any mentally competent person can give a power of attorney.

5. To think who you should give Power of Attorney

It is advised to give Power of Attorney to a trustworthy and mentally competent person such as your son, your daughter, a relative or a friend.

6. To authenticate the power of attorney if necessary.

A power of attorney for making transactions requiring notarial form must be notarially authenticated.

7. To know the exceptions which are equated to notarially authenticated powers of attorney.

According Civil Code RA art 321.3 a power of attorney for making transactions requiring notarial form must be notarially authenticated with the exception of cases provided by Civil code of RA: powers of attorney of military service personnel and of other persons who are being treated in military hospitals, sanatoria, and

other military therapeutic institutions authenticated by the head of such an institution, by his deputy for the medical section, or by a senior or duty physician; powers of attorney of military service personnel and, in locations of stationing of military units, groups, institutions, and military training schools, where there are no notarial offices nor other agencies conducting notarial operations; powers of attorney of persons who are in places of deprivation of freedom authenticated by the head of the respective place of deprivation of freedom powers of attorney of adult citizens with dispositive capacity who are in institutions for social protection of the public, authenticated by the administration of this institution or the head of the respective agency for social protection of the public.

8. To pay attention to the term of power of attorney.

The power of attorney may not exceed three years. If the term is not indicated in the power of attorney, it shall remain in force for a year from the day of its making. A power of attorney in which the date of its making is not indicated is useless.

9. To revoke agent's authority.

The represented person can revoke his/her representative's authority at any time if he/she becomes dissatisfied with the representative's performance. If he or she does not revoke a power of attorney her or himself.

10. To terminate the power of attorney.

According the art 324 of Civil Code RA the ground for termination can be expiration of the term of the power of attorney; taking the actions provided by the power of attorney; revocation of the power of attorney by the person who gave it; renunciation by the person to whom the power of attorney was given; termination of the legal person to whom the power of attorney was given; termination of the legal person to whose name the power of attorney was given, death of the citizen who gave the power of attorney or whom was given .

International Best Practice (IBP)

International practice of using power of attorney is very interesting. This legal document is popular in both civil law and common law countries. Today using the power of attorney makes life easier in all continents.

A power of attorney in common law systems or in civil law systems is an authorization to act on someone else's behalf. It is used not only in common law and civil law countries but also in Muslim countries. In all these systems a power of attorney as a legal document gives someone else the authority to make certain decisions and act for someone else.

Power of attorney as a legal instrument is regulated by laws, for example Belarus is a civil law country and its Civil Code articles are similar to Armenian Civil Code articles on the power of attorney.

As I mentioned above the policy of power of attorney is representation. Representation is very interesting transaction which one person makes in the name of another by virtue of a power based upon a power of attorney in all systems. It is not allowed to make through a representative of a transaction that by its nature may be made only personally nor to make other transactions indicated in a statute. For example marriage, in this transaction both parties must be present. But on the other hand in area of Napoleon Bonapart representation had used for marriages. Napoleon Bonapart himself used representation for his marriage. Today civil code of French is changed and Bonaparts act should not be the precedent for today's generation¹³. The other example is right to vote. You can't authorize another person to vote on your behalf. Today both these examples are transactions that by nature may be made only personally in civil and common law systems.

We all know that Muslims law plays an important role in the world. Muslims countries are very developed and rich countries. As a developed society they should protect their citizens by laws, customs and traditions. It was very interesting to find Muslims rules on power of attorney. I found that the main Issues are the same. The Muslims rule Wakalat (power of attorney) means that a person delegates somebody a task, which

¹³ Представительство и ценные бумаги в гражданском праве. Н.О.Нерсесов М;1998

he himself had a right to do, so that the other person may perform it on his behalf. The parties are the Muwakkil (the represented person), that is, the person who appoints another person as his Wakil (representative). Most important elements according to these rules are trust and good faith as in many countries like common law countries USA, Ireland.

During case studies for my paper I found the important thing which may be the only difference between Armenian practice and other countries practice. I could not find anything about good faith of acting by representative in Armenia. I only could find an art.318.3 in Civil code RA "A representative may not make a transaction with himself personally in the name of the person represented. He also may not make such a transaction with respect to another person whose representative he is simultaneously, with the exception of cases of commercial representation". In other countries legislations Good faith is very important issue, for example in US. There are many court decisions concerning this issue. One of those cases is Sikorski v. Sikorski (N.J. Super. Ct. Law Div., No. L-91-5174), which I had discussed in the case study part.

In that case the court held "A representative must act in the Good Faith and undivided loyalty toward the represented person. The representative is "fiduciary," which means that the representative must act with the highest degree of good faith in behalf of his/her represented person."

The other legislation which I would like to discuss is Belgium's as a civil law country. According to it a power of attorney enables one person (called the representative), to empower another person (called the representative) to do something on their behalf. There are two types of power of attorney as in Armenia: general and special- a general power of attorney empowers the representative to look after all the represented person's affairs and a special power of attorney is granted for one or more specific tasks. A power of attorney may be granted to one or more proxies, who may act jointly or separately. The proxy must execute a power of attorney for as long as he is entrusted with it and is liable for any damage arising as a result of failure to act in that capacity. The principal must comply with the undertakings made on his behalf by the proxy under the power of attorney. In Armenian legislation this issue is regulated in the same way.

Therefore in civil law, in common law and even in Muslim or Islamic law power of attorney is a well known legal instrument, giving authorization to act on someone else's behalf. In all studied countries the legislation has tried completely regulate the power of attorney which may help to make the life easier. There is no one best practice in those countries.

Procedure Evaluation

All jurisdictions have tried to regulate power of attorney as a legal document. Armenia as new developing country has tried to do the same. Generally, the common law as well as civil law countries consider power of attorney as a document which allows someone else to act on your behalf in matters you specify. The policy for power of attorney as I mentioned above is representation. Representation is transaction and is regulated by RA Civil Code. According to the art. 24 of Civil Code of RA the capacity of a citizen by his/her actions to acquire and exercise civil law rights, to create for himself/herself civil law duties and to fulfill them arises in full with the attainment of majority, on the attainment of the age of eighteen. Additionally, it is defined that minor who has attained the age of sixteen may be declared of full dispositive capacity if he/she works under a labor contract or, with the agreement of his parents, adoptive parents, or curator, conducts entrepreneurial activity¹⁴.

In those senses, the Civil Code of RA does not contradict the practice of either civil law or common law countries. Like many countries of civil law and common law, RA Civil Code defines a power of attorney as a written authorization issued by one person to another person for representation before third persons, its notarially authentication and the exception of cases which are equated to notarially authenticated power of attorney, defines the way of giving a power of attorney by legal entity, and the way of sending a power of attorney by telegraph and other forms of communication, defines the term of power of attorney, delegation of power of attorney, termination of a power of attorney, consequences of termination of a power of Attorney. In one word we can say that Civil law of RA regulates all aspects of power of attorney. But of course nothing is perfect.

¹⁴ Civil Code RA art.24

Recommendation for Reform and Reform Implementation

It is recommended to adopt the commentary or clarification to the RA Civil Code which will help to clearly understand the main issues in this code, such as the term "good faith". The commentary to the art 321 Civil Code of RA will explain more detailed the term "good faith" of acting by representative. This recommendation will help and give possibility even to more control representative and of course to insure the represented person's interests. According to the International Best Practice a representative must act in the good faith and undivided loyalty toward the represented person¹⁵. Power of attorney as legal document gives to the chosen person the power to manage and solve financial, legal affairs that is why good faith in Armenian legislation will give more power to the represented person. Acting in the represented person's name means that representative is a fiduciary for the represented person, this element requires representative to be completely honest with and loyal to the represented person in their dealings with each other.

It is recommended the amendment in the correction of RA Civil Code art.321.4, which is regulated the power of attorney. (A power of attorney for the receipt of wages and other payments connected with labor relations, for the receipt of payments to authors and inventors, pensions, allowances, and scholarships, deposits of citizens in banks, and for the receipt of correspondence, including monetary and parcel correspondence may also be authenticated by the organization in which the authorizing party works or studies, an agency of local self-government at the place of his residence, or the administration of the inpatient treatment institution in which he is located for treatment¹⁶). According this article a power of attorney may also be authenticated by the organization in which the ...authorizing party It means that power of attorney may be authenticated by organization in which the respective works or studies.

As we know the delivery of the power of attorney is a unilateral transaction, that's why the word authorizing is wrong and should be changed to ...authorized party.... So the power of attorney may also be authenticated by the organization in which the represented person not representative works or studies.

¹⁵ Постатейный комментарий к части первой гражданского кодекса РФ, М-1999г

¹⁶ RA civil Code 321.4

Such kinds of corrections are necessary for making our legislation better.

It is recommended to adopt the model form for power of attorney. Having model form will help to protect and secure parties' rights. It will help citizens to implement their rights through the representatives more carefully.

Today many forms are available for various kinds of power of attorney, and many organizations provide them for their clients, customers, employees, or members. But they are not legally correct.

The new forms will be more useful. Those forms will not be binding but persons have the right to use it if necessary.

The last recommendation is the need for detailed statutory regulation of the use of electronic signatures for power of attorney as a legal instrument. In spite of the fact that the art Civil Code authorizes the use of electronic signatures in cases of mutual agreement of the parties, the need for statutory regulation of the use of electronic signatures for power of attorney is very important today. The RA Civil Code is not regulated it because of power of attorney is a unilateral transaction but not mutual agreement.

According to the RA Civil code art 296.4 the use in the making of a transaction of electronic-digital signature, or other analogue of an actual handwritten signature is allowed in cases and by the procedure provided by a statute, other legal acts, or agreement of the parties. In our case the agreement of the parties plays important role but if there is not an agreement the article 321 of civil Code RA should provide the right for electronic-digital signature. There is committee of legal and technical experts, in order to assess the applicability of such law to Armenia. It is important to note that the Armenian government is supported self-regulation in any electronic signature verification process. That's why Armenia has state-licensed certifying centers.

In addition, the other recommendation is multiplying the number of notary offices in RA, which will also help to make using the power of attorney more often. Notarial authentication of a transaction shall be conducted by making on a document meeting the requirements of art. 296 of the Civil Code RA.

Today the notary offices are overcrowded, and the authentication takes too much time. That's why multiplying the number of notary offices will help parties to authenticate the documents very fast.

For realization of above mentioned suggestion it is necessary to implement reforms particularly in the Chapter 19 art. 321 of Civil Code of RA. Not only the legal offices, NGOs and media but also the citizens and not only , who are using the power of attorney must raise these issues and point out the IBP connected to the power of attorney as a legal document.

After debates, the above mentioned organizations must suggest and bring a joint legislative draft on reforms of power of attorney to the National Assembly of RA.

I hope that my suggestions will help to improve and develop our legislation which is regulated the power of attorney as a legal instrument or which is relevant to it.

Conclusion

Today an advanced stage of development of civilization is increasing people's needs. The role of power of attorney makes its importance in our life values. This is the result of high living speed. We can't walk together with today's living speed. That is why there is a need of instruments, which can help us for solving such kind problems.

Power of attorney is a civil law instrument. It is a legal instrument that gives someone else the authority to make decisions and act for the signer. Using of this instrument gives a chance to manage our time more effective. Today more and more we can see the necessity of power of attorney.

In this paper I tried to summarize the legal basis of making power of attorney by the Civil Code of Armenia and key provisions of authentication of the power of attorney by Notary and others, to present cases provide comparative analyzes thoroughly presented the institute, to suggest the ways how to improve the law in force and try to include IBP. The paper once again comes to prove that Armenian Legal Framework related to power of attorney is not far from being perfect. The above mentioned recommendations related to the innovations will contribute to the degree of protection and strengthen actors' rights.

Therefore a power of attorney is a legal instrument which gives another person the authority to act as your legal representative, and makes binding legal and financial decisions on your behalf. It is not particularly difficult to find, to create the power of attorney forms or to choose the type. The most difficult is to find person who can represent you acting with the highest degree of good faith in your behalf. Today power of attorney's use became more intensive and helps to make our life easier.