

The Mental Capacity Act 2008

COMMENCEMENT OF OPERATION: In our article [The Mental Capacity Act 2008 \("MCA"\)](#) in the February 2009 edition of CNPUdate, we reported on the MCA which had been recently passed, but had at that time not yet come into force. As of 1 March 2010, the MCA and the Office of the Public Guardian ("OPG") have come into operation, along with the availability of the "prescribed form" for a lasting power of attorney ("LPA").

Office of the Public Guardian: The OPG is headed by the Public Guardian whose functions, amongst others, include:

- Establishing and maintaining a register of LPAs.
- Setting up and maintaining a register of court orders appointing persons to make decisions on behalf of a person lacking mental capacity in relation to his personal welfare or property and affairs (each, a "deputy").
- Supervising deputies.
- Receiving reports from deputies, and persons authorised to make decisions on behalf of persons in the event that he loses his mental capacity (each a "donee").
- Investigating any contravention or alleged contravention of any provision of the MCA.
- Dealing with complaints about the way in which a deputy or donee is exercising his powers.

Board of Visitors: The Public Guardian is also supported by a Board of Visitors whose roles are to visit a person who lacks capacity ("P"), donees or deputies as may be requested by the Public Guardian or the court, and to check on the well-being of P. The Board of Visitors consists of "Special Visitors" and "General Visitors". A Special Visitor shall be a registered medical practitioner or have other suitable qualifications or training, and has special knowledge of and experience in cases of impairment or disturbance in the functioning of the mind or brain, while a General Visitor need not have a medical qualification.

In order to carry out his function, a member of the Board of Visitors may examine and take copies of any health record and any record held by any person and compiled in

connection with a social services function, insofar as the record relates to P. A member of the Board of Visitors may also interview P in private.

Lasting Power of Attorney: The LPA is a legal document that allows a person who is 21 years of age or older and who has mental capacity (a "donor"), to voluntarily appoint one or more donees, to act and make decisions on his behalf relating to his personal welfare (including health care decisions) and/or property & affairs (including finance matters) should he become mentally incapacitated in the future.

The LPA has to be made in a "prescribed form" available from the OPG in compliance with a prescribed procedure and has to be registered with the OPG, and the applicable registration fee paid, in order to be valid.

There are two (2) versions of the LPA available depending on the different needs of the donor and the extent of specific powers intended to be conferred on an appointed donee.

- LPA Form -1 is for the grant of general powers to the donee(s) with the option to select basic conditions or restrictions to these powers. The donor may complete this LPA - Form 1 himself.
- LPA Form -2 is an alternative customisable form of LPA in which the donor can give more specific powers to donees. If specific powers are required, the donor should seek assistance from a lawyer to assist in drafting this form.

Different registration fees will apply depending on the type of LPA form used and there is a mandatory waiting period of 6 weeks from the submission of an application to register the LPA (the "Waiting Period").

During the Waiting Period the donee and any persons the donor may have named to be alerted of the registration of the LPA may raise objections to the registration of the LPA. The LPA will be registered after the end of the Waiting Period if no objections were received by the OPG.

The content of this article is only intended to provide general information on the subject covered. Nothing in this article should be treated as legal advice.

Any enquiries on the MCA, LPA, or related matters may be directed to:

QUEK Li Fei

Partner

DID: +65 6349 8687

Fax: +65 6323 8282

Email: lfquek@cnplaw.com

Simon TREVETHICK

Senior Associate Manager

DID: +65 6349 8714

Fax: +65 6323 8282

Email: strevethick@cnplaw.com