



## **LAW REFORM COMMISSION'S CONSULTATION PAPER ENDURING POWERS OF ATTORNEY**

The Law Society has reviewed the Consultation Paper on Enduring Powers of Attorney ("EPA") and submits the following Answers to the Consultation Questions:

- 1. Do you agree that the existing witness requirements for executing the EPA in Hong Kong should be relaxed?**

**Answer: Yes.**

**In addition, safeguards should be introduced to require mandatory notification of the registration of the EPA to the donor and the 2 persons named in the EPA, together with an objection procedure to provide a right of recourse should there be any abuse by the attorney.**

- 2. If you have answered "yes" to question 1, do you think that the requirement that a medical witness should witness an EPA should be removed?**

**Answer: Yes.**

**The witnessing requirements for other documents are not so onerous:**

**A will requires only 2 witnesses and it is not mandatory to have a professional witness.**

**A Section 7 General Power of Attorney requires only one solicitor to witness and then the attorney could, immediately after the execution of this General Power of Attorney, transfer and dispose of all the assets of the donor.**

**To make the requirement for there to be two professional witnesses imposes a considerable burden, particularly where the person who wishes to make the EPA is likely to be advanced in years which may be the prime motivation, to delegate authority while still able, for the making of an EPA.**

3. If you have answered “no” to question 2, do you think that the requirement that the medical witness sign at the same time as the solicitor witness should be changed to allow the medical witness to sign at a different time?

Answer: N/A

4. If you have answered “yes” to question 3, what should be the maximum period allowed between the time the medical witness signs and the time the donor and the solicitor sign?

Answer: N/A

5. How do you think greater publicity could and should be given to the concept of EPAs and how an EPA can be completed?

Answer: We agree there should be a public education campaign on the concept and benefits of EPAs and the methods outlined in paragraphs 3.23 to 3.26 should be adopted. The campaign should not only target the general public but also the Government, the Elderly Commission, organisations which have front-line contacts with the elderly such as the Social Welfare Department and NGOs, private hospitals, as well as members of the legal and medical profession, and the banking industry.

The material should be in plain English and clear Chinese which can be readily understood by the ordinary citizen, and preferably in a bilingual format. Although the use of computers and the internet is increasing, it is important to remember that many of the elderly do not have access to computers let alone the ability to search the internet for information.

6. Do you agree that the statutory form of EPA and its explanatory information should be expressed more clearly?

Answer: Yes, the document should be self-contained and user-friendly, and in particular, there should not be cross-references to statutory provisions in other pieces of legislation.

7. If you have answered “yes” to question 6, do you agree that the form at Annex B should be adopted or, if not, what wording do you think should be used?

Answer: The form in Annex B is a great improvement on the statutory form. We submit there should be no citations to statutory provision in the form, rather the full provision should be included, possibly in a footnote so that the document is, as stated in Answer 6 above, self-contained.

The notification on registration in Paragraph 4 should be mandatory in order to provide protection against abuse by the attorney.

8. Do you think that the scope of the existing EPA should be reviewed and consideration given to including decisions as to the donor's personal care (but not decisions as to giving or refusing medical treatment)?

**Answer:** We consider the scope of the EPA could be reviewed to include decisions as to the donor's personal care. We note that the Law Reform Commission is also looking into the area of Advance Directives and it would be appropriate, when legislation on Advance Directives is considered, to include provisions such as the right to make decisions on "Advanced Directives - "living wills" and medical treatment in the EPA by appropriate amendments of the EPA Ordinance.

**The Law Society of Hong Kong**  
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