

Mental Capacity (Amendment) Bill

Bill No. /2016.

Read the first time on 2016.

A BILL

i n t i t u l e d

An Act to amend the Mental Capacity Act (Chapter 177A of the 2010 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act may be cited as the Mental Capacity (Amendment) Act 2016 and comes into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

5 **Amendment of section 2**

2. Section 2(1) of the Mental Capacity Act (referred to in this Act as the principal Act) is amended —

(a) by inserting, immediately after the words “section 20(2)(b)” in the definition of “deputy”, the words “and includes a professional deputy appointed under section 24(1)”;

(b) by inserting, immediately after the words “section 11(1)” in the definition of “donee”, the words “and includes a professional donee appointed under section 12(1)”;

(c) by inserting, immediately after the definition of “life-sustaining treatment”, the following definitions:

““professional deputy” means a person —

(a) who provides the services of a deputy for remuneration and includes a person who offers such services; and

(b) who is registered with the Public Guardian as a professional deputy;

“professional donee” means a person —

(a) who is a professional deputy or is within a class of persons prescribed as qualified to be a professional donee; and

(b) who provides the services of a donee for remuneration and includes a person who offers such services;”;

(d) by deleting the definition of “Public Guardian” and substituting the following definition:

““Public Guardian”, in relation to any section of this Act except section 30, means the Public Guardian appointed under section 30(1) and includes an Assistant Public Guardian;”.

5 **Amendment of section 12**

3. Section 12 of the principal Act is amended —

(a) by deleting subsection (1) and substituting the following subsection:

“(1) A donee of a lasting power of attorney must be —

10 (a) where the power relates only to P’s property and affairs —

(i) an individual who has attained 21 years of age and provides to P the services of a donee without remuneration;

15 (ii) an individual who is a professional donee and is not related to P by blood or marriage; or

(iii) a professional donee who is not an individual; and

20 (b) in any other case —

(i) an individual who has attained 21 years of age and provides to P the services of a donee without remuneration; or

25 (ii) an individual who is a professional donee and is not related to P by blood or marriage.”;

(b) by inserting, immediately after the word “person” in subsection (8)(b), the words “(called in subsection (9) the replacement donee)”; and

30 (c) by inserting, immediately after subsection (8), the following subsection:

“(9) To avoid doubt, an instrument used to create a lasting power of attorney cannot itself appoint a person to replace the replacement donee.”.

Repeal and re-enactment of section 16

- 5 **4.** Section 16 of the principal Act is repealed and the following section substituted therefor:

“Protection of donees and others if no power created or power revoked or suspended

16.—(1) This section applies where —

- 10 (a) an instrument purporting to create a lasting power of attorney has been registered under the First Schedule, but a lasting power of attorney was not validly created, whether or not the registration is cancelled at the time of the act or transaction in question; or

- 15 (b) a lasting power of attorney is revoked or suspended.

(2) A donee who does an act that would have been within the scope of the lasting power of attorney without knowing of the non-existence, revocation or suspension of the lasting power of attorney does not incur any liability to P or any other person, despite the non-existence, revocation or suspension.

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(3) A person (called in this section a third party) who deals or otherwise transacts in good faith with the donee, without knowing of the non-existence, revocation or suspension of the lasting power of attorney, does not incur any liability to P or any other person in relation to that dealing or transaction, despite the non-existence, revocation or suspension.

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(4) Where the interest of a purchaser depends on whether a transaction between the donee and a third party was valid by virtue of subsection (3), it is presumed in favour of the purchaser that the transaction was valid if —

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- (a) the transaction was completed within 12 months after the date on which the instrument intending to create a lasting power of attorney was registered; or

5 (b) the third party in subsection (3) makes a statutory declaration, before or within 3 months after the completion of the purchase, that the third party had no reason at the time of the transaction to doubt that the donee had authority to dispose of the property which was the subject of the transaction.

(5) In subsection (4), “purchaser” means a person claiming through the third party and who acquires the property in good faith and for valuable consideration.

10 (6) For the purposes of this section, knowledge of the non-existence, revocation or suspension of a lasting power of attorney includes knowledge of the happening of any event which prevents the lasting power of attorney from being created or has the effect of revoking or suspending the lasting power of attorney or the power under that lasting power of attorney.

15 (7) In this section, where 2 or more donees are appointed under a lasting power of attorney, a reference to the donee is a reference to all or any of the donees.

20 (8) This section applies only to acts and transactions made after the date of commencement of section 4 of the Mental Capacity (Amendment) Act 2016, whether the lasting power of attorney is created or purported to be created before, on or after that date.”.

Amendment of section 17

5. Section 17 of the principal Act is amended —

25 (a) by deleting the word “or” at the end of subsection (3)(a)(ii);

(b) by deleting paragraph (b) of subsection (3) and substituting the following paragraphs:

 “(b) that the donee (or, if there is more than one donee, any of the donees) of a lasting power of attorney

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(i) is, on or after the date of commencement of section 5 of the Mental Capacity (Amendment) Act 2016 (but not before the

- 5 donee's appointment under the lasting power of attorney), convicted of an offence (whenever committed) of criminal misappropriation, criminal breach of trust, cheating, theft or extortion or any other offence involving fraud or dishonesty, whether as against the donor or another person;
- 10 (ii) engages or has engaged in conduct that contravenes the donee's authority or is not in P's best interests; or
- (iii) proposes to engage in conduct that would contravene the donee's authority or would not be in P's best interests; or
- 15 (c) where the donee (or, if there is more than one donee, any of the donees) of a lasting power of attorney is a professional donee, that —
- (i) the registration of the donee as a professional deputy is cancelled or the donee is no longer within a class of persons prescribed as qualified to be a professional donee; and
- 20 (ii) P lacks capacity.”;
- (c) by deleting the word “or” at the end of subsection (4)(a);
- 25 (d) by deleting the full-stop at the end of subsection (4)(b) and substituting the word “; or”, and inserting immediately thereafter the following paragraph:
- 30 “(c) in a case referred to in subsection (3)(c), revoke the instrument or the lasting power of attorney so far as it relates to the donee whose registration as a professional deputy is cancelled or who is no longer within a class of persons prescribed as qualified to be a professional donee.”; and

(e) by inserting, immediately after subsection (5), the following subsections:

5 “(5A) The court may under subsection (4)(b) or (c) revoke the instrument or the lasting power of attorney in respect of all or such of the matters to which the lasting power of attorney relates as the court thinks fit.

10 (5B) The court may make further orders or give directions as the court thinks necessary or expedient for giving effect to, or otherwise in connection with, the revocation of the instrument or the lasting power of attorney.”.

Amendment of section 20

6. Section 20(8) of the principal Act is amended —

(a) by deleting the words “the deputy”; and

15 (b) by deleting paragraphs (a) and (b) and substituting the following paragraphs:

20 “(a) the deputy is, on or after the date of commencement of section 6 of the Mental Capacity (Amendment) Act 2016 (but not before the deputy’s appointment by the court), convicted of an offence (whenever committed) of criminal misappropriation, criminal breach of trust, cheating, theft or extortion or any other offence involving fraud or dishonesty, whether as against P or another person;

(b) the deputy engages or has engaged in conduct that contravenes the deputy’s authority conferred by the court or is not in P’s best interests;

30 (c) the deputy proposes to engage in conduct that would contravene the deputy’s authority conferred by the court or would not be in P’s best interests; or

- (d) where the deputy is a professional deputy, that the registration of the deputy as a professional deputy is cancelled.”.

Amendment of section 24

5 **7.** Section 24 of the principal Act is amended —

(a) by deleting subsection (1) and substituting the following subsection:

“(1) A deputy appointed by the court must be —

10 (a) where the appointment confers powers relating only to P’s property and affairs —

(i) an individual who has attained 21 years of age and provides to P the services of a deputy without remuneration;

15 (ii) an individual who is a professional deputy and is not related to P by blood or marriage; or

(iii) a professional deputy who is not an individual; and

(b) in any other case —

20 (i) an individual who has attained 21 years of age and provides to P the services of a deputy without remuneration; or

25 (ii) an individual who is a professional deputy and is not related to P by blood or marriage.”; and

(b) by deleting subsection (8) and substituting the following subsections:

30 “(8) A deputy under subsection (1)(a)(i) or (b)(i) is entitled to be reimbursed out of P’s property for the deputy’s reasonable expenses in discharging the deputy’s functions, but is not entitled to remuneration.

(8A) A deputy under subsection (1)(a)(ii) or (iii) or (1)(b)(ii) is entitled —

- 5 (a) to be reimbursed out of P’s property for the deputy’s reasonable expenses in discharging the deputy’s functions; and
- (b) to such remuneration, as the court determines, out of P’s property for discharging the deputy’s functions.”.

New section 25A

10 **8.** The principal Act is amended by inserting, immediately after section 25, the following section:

“Professional deputies

15 **25A.**—(1) Any person who intends to offer and provide the services of a deputy for remuneration must register with the Public Guardian as a professional deputy.

(2) The Public Guardian may register a person as a professional deputy upon being satisfied that the person meets all the prescribed criteria.

20 (3) A professional deputy’s registration under this section may be subject to such terms and conditions as may be specified by the Public Guardian.

(4) The Public Guardian may cancel the registration of a professional deputy at the professional deputy’s request or upon the occurrence of any of the prescribed events.

25 (5) Before cancelling a professional deputy’s registration upon the occurrence of any of the prescribed events, the Public Guardian must give the professional deputy written notice of the intention to cancel the registration.

30 (6) The professional deputy may make representations to the Public Guardian within one month after receiving the notice in subsection (5) (or such longer period as the Public Guardian may allow).

(7) The Public Guardian must consider any representations made by the professional deputy under subsection (6) before making a decision.

5 (8) The Public Guardian must inform the professional deputy in writing of the decision within one month after the end of the period in subsection (6) for making representations.

10 (9) Any person who is aggrieved by the Public Guardian's refusal to register the person as a professional deputy or cancellation of the person's registration as a professional deputy may within the prescribed period appeal to the Minister, whose decision is final.

(10) Where a person's registration as a professional deputy is cancelled, the Public Guardian must within the prescribed period inform all the following persons of the cancellation:

- 15 (a) where the person has been appointed as a donee in any lasting power of attorney, the donor of the lasting power of attorney;
- (b) such other prescribed persons.”.

Amendment of section 30

20 **9.** Section 30 of the principal Act is amended —

- (a) by inserting, immediately after subsection (1), the following subsections:

25 “(1A) The Minister may appoint such number of Assistant Public Guardians as the Minister thinks necessary to assist the Public Guardian in the proper discharge of the Public Guardian's functions.

(1B) An Assistant Public Guardian may exercise all the powers of the Public Guardian, except the power of delegation conferred by this section.”;

- 30 (b) by deleting the words “appoint a person” in subsection (2) and substituting the words “appoint an Assistant Public Guardian or any other person”; and

(c) by deleting subsection (9) and substituting the following subsection:

5 “(9) The Public Guardian and every Assistant Public Guardian are deemed to be public servants for the purposes of the Penal Code (Cap. 224).”.

Amendment of section 31

10. Section 31(1) of the principal Act is amended by inserting, immediately after paragraph (b), the following paragraph:

10 “(ba) establishing and maintaining a register of professional deputies;”.

Repeal of section 33 and new section 33

11. Section 33 of the principal Act is repealed and the following section substituted therefor:

“Appointment of auditors

15 **33.**—(1) Without prejudice to the Public Guardian’s functions and powers under this Act, the Public Guardian may appoint in writing an auditor to assist the Public Guardian in examining, either generally or in relation to any particular matter —

20 (a) any report of a donee of a lasting power of attorney or of a deputy appointed by the court; and

(b) any book, document, electronic computing or storage device or information obtained by the Public Guardian in the discharge or exercise of the Public Guardian’s functions or powers under this Act.

25 (2) Any auditor appointed by the Public Guardian under subsection (1) must be a public accountant registered under the Accountants Act (Cap. 2).

30 (3) For the purposes of this section, the Public Guardian may disclose to an auditor appointed under subsection (1) any book, document, electronic computing or storage device or information obtained or received by the Public Guardian under this Act,

where the disclosure is necessary to enable the auditor to carry out an examination under subsection (1).

(4) The auditor must, upon completion of the examination under subsection (1), submit a report to the Public Guardian.”.

5 **Repeal of section 34 and new section 34**

12. Section 34 of the principal Act is repealed and the following section substituted therefor:

“Protection from personal liability

34. No liability shall lie personally against —

- 10 (a) the Public Guardian, any Assistant Public Guardian or any person acting under the direction of the Public Guardian or an Assistant Public Guardian;
- (b) any member of the Board of Visitors; or
- (c) any auditor appointed under section 33,

15 who, acting in good faith and with reasonable care, does or omits to do anything in the execution or purported execution of this Act.”.

New section 36A

20 **13.** The principal Act is amended by inserting, immediately after section 36, the following section:

“Orders of suspension

25 **36A.**—(1) Despite section 36, on the application of a person mentioned in subsection (2), the court may make an order to suspend, for such period as the court thinks fit, all or any of the powers of P’s donee or deputy (called in this section an order of suspension) even where no application has been made to the court in relation to P.

(2) The following persons may apply to the court for an order of suspension:

- 30 (a) the Public Guardian;

- (b) a person mentioned in section 38(1)(a), (b), (c) or (d);
- (c) any other person, but only with permission of the court.

(3) The court may make an order of suspension under subsection (1) if the court has reason to believe that —

- 5 (a) P lacks capacity;
- (b) the donee or deputy, as the case may be, is on or after the date of commencement of section 12 of the Mental Capacity (Amendment) Act 2016 (but not before the donee’s or deputy’s appointment under the lasting power of attorney or by the court, as the case may be) charged with an offence (whenever committed) of criminal misappropriation, criminal breach of trust, cheating, theft or extortion or any other offence involving fraud or dishonesty, or engages in conduct or proposes to engage in conduct that —
 - 10 (i) affects the suitability of the donee or deputy concerned to act as a donee or deputy; or
 - (ii) compromises P’s best interests in relation to P’s personal welfare or P’s property and affairs, whether the donee or deputy concerned is acting under the lasting power of attorney or court order, as the case may be, or otherwise; and
- 15 (c) there is a risk of dissipation of P’s property by the donee or deputy concerned if the order of suspension is not made.

(4) The court may make further orders or give directions as the court thinks necessary or expedient for giving effect to, or otherwise in connection with, an order of suspension.

(5) An order of suspension may be varied or discharged by a subsequent order.

(6) In this section, “P” means the person who lacks capacity and —

- (a) before lacking capacity, has conferred a lasting power of attorney on one or more donees; or
 - (b) in respect of whom the court has appointed one or more deputies.
- 5 (7) In this section —
- (a) where 2 or more donees are appointed under a lasting power of attorney, a reference to the donee is a reference to all or any of the donees; and
 - (b) where 2 or more deputies are appointed by the court for
10 P, a reference to the deputy is a reference to all or any of the deputies.”.

New sections 43A and 43B

14. The principal Act is amended by inserting, immediately after section 43, the following sections:

15 **“Notification of change of address**

43A.—(1) Subject to subsection (2), every donor and donee of a lasting power of attorney and every deputy appointed by the court must inform the Public Guardian in writing of any change in —

- 20 (a) where the donor, donee or deputy is an individual, the place of residence of the donee or deputy, as the case may be; and
- (b) where the donee or deputy is a person other than an individual, the registered business address of the donee
25 or deputy, as the case may be.

(2) If a donor, donee or deputy changes his or her place of residence and reports the change under section 8 of the National Registration Act (Cap. 201), that donor, donee or deputy, as the case may be, is taken to have informed the Public Guardian of
30 the change of that place of residence in accordance with subsection (1)(a) or (b), as the case may be.

(3) Where a person (“P”) lacks capacity, a donee of a lasting power of attorney created by P or a deputy appointed by the court for P, as the case may be, may on P’s behalf inform the Public Guardian in writing of any change in P’s place of residence.

5 **General exemption**

43B. The Minister may, by order published in the *Gazette*, exempt any person or class of persons from all or any provisions of this Act or the regulations, either generally or in a particular case and subject to such conditions as the Minister may impose.”.

10 **Amendment of section 46**

15. The principal Act is amended by renumbering section 46 as subsection (1) of that section, and inserting immediately thereafter the following subsection:

15 “(2) The regulations made under subsection (1) may, in particular —

- (a) prescribe different classes of professional donees, and provide for matters relating to professional donees; and
 - (b) provide for matters relating to professional deputies, including but not limited to their duties, the registration of professional deputies by the Public Guardian, applications for registration, exemptions from one or more criteria for registration, and cancellation of registration.”.
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Amendment of First Schedule

25 **16.** The First Schedule to the principal Act is amended —

- (a) by deleting paragraph 10; and
- (b) by inserting, immediately after the words “give notice of the note to” in paragraph 24, the words “the donor and”.

Saving and transitional provisions

30 **17.—**(1) Section 5 does not apply to any application to the court for an order under section 17 of the principal Act made before the date

of commencement of section 5, and section 17 of the principal Act as in force immediately before that date continues to apply to any such application as if section 5 had not been enacted.

5 (2) Section 6 does not apply to any application to the court for an order under section 20(7) and (8) of the principal Act made before the date of commencement of section 6, and section 20(8) of the principal Act as in force immediately before that date continues to apply to any such application as if section 6 had not been enacted.

10 (3) Section 16(a) does not apply to any application for registration of an instrument intended to create a lasting power of attorney that is received by the Public Guardian before the date of commencement of section 16(a), and paragraph 10 of the First Schedule to the principal Act as in force immediately before that date continues to apply to any such application as if section 16(a) had not been enacted.

15 (4) For a period of 2 years after the date of commencement of any provision of this Act, the Minister may, by regulations, prescribe such additional provisions of a savings or transitional nature consequent on the enactment of that provision as the Minister may consider necessary or expedient.

EXPLANATORY STATEMENT

This Bill seeks to amend the Mental Capacity Act (Cap. 177A) ...

Clause 1 relates to the short title and commencement.

[The remainder of the Explanatory Statement will be inserted when the text of the Bill has been finalised.]

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.