Mental Capacity (Amendment) Bill ![](data:None;base64...)

Bill No. /2020.

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A BILL
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An Act to amend the Mental Capacity Act (Chapter 177A of the 2010 Revised Edition) and to make related amendments to the Electronic Transactions Act (Chapter 88 of the 2011 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 is the Mental Capacity (Amendment) Act 2020 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

Amendment of section 2

**2.**  Section 2 of the Mental Capacity Act (called in this Act the principal Act) is amended —

 (*a*) by inserting, immediately after the definition of “donee” in subsection (1), the following definitions:

“ “electronic”, “electronic record”, “record”, “secure electronic signature” and “signed” or “signature” have the same meanings as in section 2(1) of the Electronic Transactions Act (Cap. 88);

“electronic instrument” means an electronic record that confers authority of the kind mentioned in section 11(1);

“electronic transaction system” means the electronic transaction system established by the Public Guardian under section 10B(1);”;

 (*b*) by inserting, immediately after the definition of “life‑sustaining treatment” in subsection (1), the following definition:

“ “non-electronic lasting power of attorney” means a lasting power of attorney that is created using non‑electronic means;”;

 (*c*) by inserting, immediately after the definition of “registered medical practitioner” in subsection (1), the following definition:

“ “Singapore public sector agency” has the same meaning as in section 2(1) of the Public Sector (Governance) Act 2018 (Act 5 of 2018);”; and

 (*d*) by inserting, immediately after subsection (2), the following subsections:

“(3)  For the purposes of this Act, a reference to an instrument that confers authority of the kind mentioned in section 11(1) includes an electronic instrument made in accordance with section 11(2)(*b*)(i).”.

New Part IIIA

**3.**  The principal Act is amended by inserting, immediately after section 10, the following Part and Part heading:

“PART IIIA
eLECTRONIC TRANSACTION SYSTEM

Interpretation of this Part

**10A.**  In this Part, unless the context otherwise requires —

“document” includes a document in electronic form;

 “malfunction”, in relation to the electronic transaction system, includes any defect or breakdown in that system or in any equipment, software or telecommunication networks used in or in connection with that system;

“transaction”, in relation to the Public Guardian, means —

 (*a*) the creation of an electronic instrument that is intended to be registered as a lasting power of attorney, using the electronic transaction system;

 (*b*) the filing or lodging of any document with the Public Guardian, or the submission, production, delivery, furnishing or sending of any document to the Public Guardian, under or for the purposes of this Act;

 (*c*) the making of any application, submission or request to the Public Guardian under or for the purposes of this Act;

 (*d*) the provision of any undertaking or declaration to the Public Guardian under or for the purposes of this Act; and

 (*e*) the extraction, retrieval or accessing of any document, record or information maintained by the Public Guardian under or for the purposes of this Act.

Establishment of electronic transaction system

**10B.**—(1) The Public Guardian may establish an electronic transaction system —

 (*a*) to enable any donor to create an electronic instrument with a view to creating a lasting power of attorney;

 (*b*) to enable any person to carry out any transaction with the Public Guardian;

 (*c*) to enable a person to give a notice to another person under or for the purposes of this Act;

 (*d*) to enable the Public Guardian to issue any approval, certification, notice or other document under or for the purposes of this Act;

 (*e*) to enable the Public Guardian to attach a note to any lasting power of attorney;

 (*f*) to enable the Public Guardian to provide to persons entitled copies or extracts of documents filed or lodged with, submitted to, or issued by, the Public Guardian;

 (*g*) to enable the Public Guardian to provide a service for the supply to the public of non-confidential information relating to transactions with the Public Guardian; and

 (*h*) to enable the Public Guardian to carry out any of the Public Guardian’s functions, or to provide any other service falling within those functions.

(2)  The information that may be provided under the service mentioned in subsection (1)(*g*) —

 (*a*) may include —

 (i) information extracted from documents filed or lodged with, submitted to, or issued by, the Public Guardian; and

 (ii) collations, summaries, reports or analyses of documents filed or lodged with, submitted to, or issued by, the Public Guardian; and

 (*b*) may be derived from documents filed or lodged with, submitted to, or issued by, the Public Guardian other than through the electronic transaction system.

 (3) Where a person gives a notice to the Public Guardian using the electronic transaction system, the notice is deemed to have been given when any portion of the notice enters the electronic transaction system.

(4)  Where any transaction with the Public Guardian can be carried out using the electronic transaction system, the Public Guardian may refuse to process the transaction unless —

 (*a*) the transaction is carried out in accordance with this Part including the requirements for the use of the system specified in subsection (5);

 (*b*) the transaction meets the requirements prescribed in this Act or specified by the Public Guardian (as the case may be) for that transaction; and

 (*c*) the fee payable for the transaction has been paid.

(5)  Subject to this Part and any regulations made under section 46, the Public Guardian may, from time to time, determine the requirements for the use of the electronic transaction system, which may include —

 (*a*) conditions of access to, and use of, the electronic transaction system;

 (*b*) security and authentication requirements for access to, and use of, the electronic transaction system;

 (*c*) retention and production of documents supporting or authenticating transactions; and

 (*d*) modes of payment for transactions.

(6)  The Public Guardian must keep a record, in such form as the Public Guardian may determine, of —

 (*a*) all transactions with the Public Guardian under or for the purpose of this Act that are carried out using the electronic transaction system;

 (*b*) all approvals, certification, notices and other documents issued by the Public Guardian under or for the purposes of this Act through the electronic transaction system; and

 (*c*) all notes attached by the Public Guardian to any lasting power of attorney using the electronic transaction system.

(7)  On or after the date of commencement of section 4 of the Mental Capacity (Amendment) Act 2020, the Public Guardian may return any non-electronic lasting power of attorney that is kept by the Public Guardian to its donor if the Public Guardian has ensured that an electronic copy of the lasting power of attorney (including all the notes attached to it under the Act), that is free from any error, is kept in the electronic transaction system, and from the date of the return of the non‑electronic lasting power of attorney but subject to subsection (9), the electronic copy of the lasting power of attorney kept in the electronic transaction system is to be treated as the lasting power of attorney.

(8)  Where —

 (*a*) the Public Guardian has, before the date of commencement of section 4 of the Mental Capacity (Amendment) Act 2020, returned any non-electronic lasting power of attorney that is registered before that date to its donor after ensuring that an electronic copy of the lasting power of attorney (including all the notes attached to it under the Act), that is free from any error, was made;

 (*b*) the electronic copy of the lasting power of attorney is thereafter kept in the electronic transaction system; and

 (*c*) a notice is sent to the donor informing the donor that unless the Public Guardian is notified of any error in the electronic copy of the lasting power of attorney kept in the electronic transactions system within 30 days (or other longer prescribed period) after the sending of notice, the electronic copy of the lasting power of attorney will be treated as free from error,

then the electronic copy of the lasting power of attorney kept in the electronic transaction system is, after the abovementioned period of 30 days (or other longer prescribed period) but subject to subsection (9), to be treated as the lasting power of attorney.

(9)  The donor to whom a non-electronic lasting power of attorney has been returned under subsection (7) or (8) may —

 (*a*) in a case under subsection (7), within 30 days (or other longer prescribed period) after the return of the lasting power of attorney; or

 (*b*) in a case under subsection (8), within 30 days (or other longer prescribed period) after the date of the notice mentioned in subsection (8)(*c*),

notify the Public Guardian of any error in the electronic copy of the lasting power of attorney kept in the electronic transaction system, and request the Public Guardian to rectify the error.

(10)  The Public Guardian must ensure that each of the following documents is kept in such form as the Public Guardian may determine, that ensures the integrity, and enables the retrieval, of the document:

 (*a*) any lasting power of attorney that is made using the electronic transaction system;

 (*b*) any electronic copy of a non-electronic lasting power of attorney.

Requirement to use electronic transaction system

**10C.**—(1) Except as provided in subsection (2), a person who wishes to carry out a transaction with the Public Guardian under or for the purposes of the Act —

 (*a*) must do so using the electronic transaction system if the transaction is the creation of an electronic instrument and thereafter an application for the registration of the instrument purporting to create a lasting power of attorney;

 (*b*) must do so using the electronic transaction system if required by the Public Guardian; or

 (*c*) may do so using the electronic transaction system if permitted by the Public Guardian.

(2)  If a transaction with the Public Guardian under or for the purposes of the Act cannot be carried out using the electronic transaction system due to unavailability of the system, the transaction must be carried out in the form and manner determined by the Public Guardian.

Evidence of transaction on electronic transaction system

**10D.**—(1)  Despite any other written law or rule of law —

 (*a*) a copy of the whole or any part of any original document that is certified by the Public Guardian to be a true copy of the whole or the relevant part of the original document is in any proceedings admissible in evidence as of equal validity with the original document; and

 (*b*) any document prepared by the Public Guardian that —

 (i) consists of information reproduced or extracted from any original document; and

 (ii) contains a statement by the Public Guardian that the information is a true reproduction or extract of the original document,

is in any proceedings admissible in evidence in place of and to the same extent as the original document, unless evidence to the contrary is adduced.

(2)  In this section, “original document” means a document (other than a lasting power of attorney) that is filed or lodged with, submitted to, or issued by, the Public Guardian using the electronic transaction system.

Lasting powers of attorney registered using, or kept in, electronic transaction system to prevail

**10E.**—(1) A copy of an instrument certified by the Public Guardian under paragraph 15(1) of the First Schedule to be a true copy of the original instrument registered to create a lasting power of attorney is —

 (*a*) evidence of the contents of the original instrument on the date and time specified on that copy; and

 (*b*) evidence of the registration of the instrument by the Public Guardian on the date and time specified on that copy.

(2)  Where there is any inconsistency between —

 (*a*) a non-electronic lasting power of attorney, which has been returned to its donor under section 10B(7) or (8); and

 (*b*) an electronic copy of the lasting power of attorney that is kept by the Public Guardian in the electronic transaction system, including any note that the Public Guardian attaches to the electronic copy of the instrument in accordance with the First Schedule whether before, on or after the date of commencement of section 4 of the Mental Capacity (Amendment) Act,

subject to section 10B(9), the electronic copy of the lasting power of attorney mentioned in paragraph (*b*) prevails.

Electronic transaction system malfunction, errors and omissions

**10F.**—(1)  Despite any other written law or rule of law, the Public Guardian may —

 (*a*) correct any error or omission in any register kept by the Public Guardian under this Act;

 (*b*) correct any error or omission in any document filed or lodged with, or submitted to, the Public Guardian; and

 (*c*) supply entries or records omitted to be made in any register mentioned in paragraph (*a*),

if the error or omission has occurred or arisen as a result of any malfunction of the electronic transaction system.

(2)  The Public Guardian must maintain a record of every correction made under subsection (1).

(3)  When any error or omission has been corrected under subsection (1), the error or omission is deemed not to have occurred.

(4)  The Public Guardian, an Assistant Public Guardian, an authorised officer or any person acting under the direction of the Public Guardian or an Assistant Public Guardian is not liable for any loss or damage, suffered by any person by reason of any error or omission, if —

 (*a*) the error or omission had occurred or arisen as a result of any malfunction in the electronic transaction system; and

 (*b*) the malfunction in the electronic transaction system had occurred despite the Public Guardian having acted in good faith and with reasonable care to prevent such a malfunction from occurring.”.

Amendment of section 11

**4.**  Section 11 of the principal Act is amended —

 (*a*) by deleting paragraph (*b*) of subsection (2) and substituting the following paragraph:

 “(*b*) an instrument conferring authority of the kind mentioned in subsection (1) —

 (i) is made using the electronic transaction system in accordance with section 12A and the First Schedule; and

 (ii) is registered in accordance with the First Schedule; and”; and

 (*b*) by inserting, immediately after subsection (2), the following subsection:

“(2A)  Despite subsection (2)(*b*)(i), the Public Guardian may allow an instrument conferring authority of the kind mentioned in subsection (1) to be made in accordance with the First Schedule, without using the electronic transaction system, in the following circumstances:

 (*a*) where the electronic transaction system is unavailable;

 (*b*) where due to the personal circumstances or physical disability of the donor or donee, the donor is unable to make the instrument or the donee is unable to sign the instrument using the electronic transaction system; or

 (*c*) any other circumstances where use of the electronic transactions system would not be possible, as may be prescribed.”.

Amendment of section 12

**5.**  Section 12 of the principal Act is amended by deleting subsection (9) and substituting the following subsection:

“(9)  To avoid doubt, an instrument used to create a lasting power of attorney —

 (*a*) may itself appoint one or more replacement donees in respect of a particular donee; but

 (*b*) cannot itself appoint a person to replace the replacement donee.”.

New section 12A

**6.**  The principal Act is amended by inserting, immediately after section 12, the following section:

“Execution of lasting power of attorney

**12A.** On or after the date of commencement of section 6 of the Mental Capacity (Amendment) Act 2020, where a rule of law requires an instrument conferring authority of the kind mentioned in section 11(1) to be a deed, that requirement is met by an electronic record in the electronic transaction system if —

 (*a*) the electronic record clearly states on its face that it is intended to be a deed by P;

 (*b*) P signs the electronic record by applying a secure electronic signature to the electronic record in the electronic transaction system;

 (*c*) P’s signature is attested by a witness who witnesses P’s execution of the electronic record; and

 (*d*) the executed electronic record is delivered as a deed by P.”.

Amendment of section 15

**7.** —(1)  Section 15 of the principal Act is amended by inserting, immediately after subsection (8), the following subsection:

“(9)  A donor who revokes a lasting power of attorney must notify all the following persons that the donor has done so:

 (*a*) the Public Guardian;

 (*b*) the donee or (if more than one) each of them.”.

Amendment of section 31

**8.**  Section 31(1) of the principal Act is amended by deleting the full‑stop at the end of paragraph (*k*) and substituting a semi‑colon, and by inserting immediately thereafter the following paragraph:

 “(*l*) establishing and maintaining the electronic transaction system.”.

New section 31A

**9.**  The principal Act is amended by inserting, immediately after section 31, the following section:

“Public Guardian may interview donor

**31A.**—(1) If on receiving an application to register an instrument purporting to create a lasting power of attorney, the Public Guardian has reasonable cause to suspect that fraud or undue pressure was used to induce a person (“P”) to —

 (*a*) execute the instrument; or

 (*b*) execute the instrument to appoint a particular person as P’s donee,

the Public Guardian or an authorised officer mentioned in section 30(3) may require the donor to appear before him or her at any reasonable time and at any convenient place.

(2)  The Public Guardian or authorised officer may interview the donor to ascertain whether any fraud or undue pressure was used to induce P to do either of the acts mentioned in subsection (1)(*a*) or (*b*).

(3)  Where the Public Guardian has reason to suspect that fraud or undue pressure has been used to induce P to execute an instrument to appoint a particular person as P’s donee, the Public Guardian may disclose to P the number of lasting powers of attorney under which that person is appointed as donee.”.

New section 33A

**10.**  The principal Act is amended by inserting, immediately after section 33, the following sections:

 “Rectification or updating on Public Guardian’s initiative

**33A.**—(1)  The Public Guardian may rectify or update any particulars or document in a register kept by the Public Guardian, if the Public Guardian is satisfied that —

 (*a*) there is an error or a defect in the particulars or document arising from any grammatical, typographical or similar mistake; or

 (*b*) there is evidence of a conflict between the particulars of a person and —

 (i) other information in the register relating to that person; or

 (ii) other information relating to that person obtained from any Singapore public sector agency that may be prescribed.

(2)  Before the Public Guardian rectifies or updates the register under subsection (1), the Public Guardian must, except under prescribed circumstances, give written notice to the person whose documents or particulars are to be rectified or updated of the Public Guardian’s intention to do so, and state in the notice —

 (*a*) the reasons for and details of the proposed rectification or updating to be made to the register; and

 (*b*) the date by which any written objection to the proposed rectification or updating must be delivered to the Public Guardian, being a date at least 30 days or other prescribed period after the date of the notice.

(3)  The person notified under subsection (2) may deliver to the Public Guardian, not later than the date specified under subsection (2)(*b*), a written objection to the proposed rectification or updating of the register.

(4)  The Public Guardian must not rectify or update the register if the Public Guardian receives a written objection under subsection (3) to the proposed rectification or updating by the date specified under subsection (2)(*b*), unless the Public Guardian is satisfied that the objection is frivolous or vexatious or has been withdrawn.

(5)  The Public Guardian may rectify or update the register if the Public Guardian does not receive a written objection under subsection (3) by the date specified under subsection (2)(*b*).

(6)  The Public Guardian may include such notation as the Public Guardian thinks fit on the register for the purposes of providing information relating to any error or defect in any particulars or document in the register, and may remove such notation if the Public Guardian is satisfied that it no longer serves any useful purpose.

(7)  Despite anything in this section, the Public Guardian may, if the Public Guardian is satisfied that there is any error or defect in any particulars or document in a register, by notice in writing, request that the person to which the particulars or document relate take such steps within such time as the Public Guardian may specify to ensure that the error or defect is rectified.

(8)  In this section —

“document” does not include a lasting power of attorney;

“register” means —

 (*a*) a register of lasting powers of attorney;

 (*b*) a register of orders appointing deputies; or

 (*c*) a register of professional deputies.

New section 43C

**11.**  The principal Act is amended by inserting, immediately after section 43B, the following section:

“Service of documents

**43C.**—(1)  A document that is permitted or required by this Act to be served by the Public Guardian on a person may be served as described in this section.

(2)  Subject to subsections (5), (6), (7) and (9), a document may be served on an individual —

 (*a*) by giving it to the individual personally;

 (*b*) by sending it by prepaid registered post to the address specified by the individual for the service of documents or, if no address is so specified, the individual’s residential address or business address;

 (*c*) by leaving it at the individual’s residential address with an adult person apparently residing there, or at the individual’s business address with an adult person apparently employed there;

 (*d*) by affixing a copy of the document in a conspicuous place at the individual’s residential address or business address;

 (*e*) by sending it by fax to the fax number given by the individual as the fax number for the service of documents under this Act;

 (*f*) by sending it by email to the individual’s email address; or

 (*g*) by sending it to the individual’s account with the electronic transaction system and notifying the individual of this fact by —

 (i) email to the individual’s email address; or

 (ii) an electronic notice to the individual’s mobile telephone number via short message service.

(3)  A document may be served on a partnership (other than a limited liability partnership) —

 (*a*) by giving it to any partner or other like officer of the partnership;

 (*b*) by leaving it at, or by sending it by prepaid registered post to, the partnership’s business address;

 (*c*) by sending it by fax to the fax number used at the partnership’s business address;

 (*d*) by sending it by email to the partnership’s email address; or

 (*e*) by sending it to the partnership’s account with the electronic transaction system and notifying the partnership of this fact by —

 (i) email to the partnership’s email address; or

 (ii) an electronic notice to the partnership’s mobile telephone number via short message service.

(4)  A document may be served on a body corporate (including a limited liability partnership) or an unincorporated association —

 (*a*) by giving it to the secretary or other like officer of the body corporate or unincorporated association, or the limited liability partnership’s manager;

 (*b*) by leaving it at, or by sending it by prepaid registered post to, the body corporate’s or unincorporated association’s registered office or principal office in Singapore;

 (*c*) by sending it by fax to the fax number used at the body corporate’s or unincorporated association’s registered office or principal office in Singapore;

 (*d*) by sending it by email to the body corporate’s or unincorporated association’s email address; or

 (*e*) by sending it to the body corporate’s or unincorporated association’s account with the electronic transaction system and notifying the body corporate or unincorporated association of this fact by —

 (i) email to the body corporate’s or unincorporated association’s email address; or

 (ii) by an electronic notice to the body corporate’s or unincorporated association’s mobile telephone number via short message service.

(5)  A document may only be served in the manner mentioned in subsection (2)(*g*)(ii), (3)(*e*)(ii) or (4)(*e*)(ii) on an individual, a partnership, a body corporate or an unincorporated association (as the case may be) if the individual, partnership, body corporate or unincorporated association (as the case may be) has —

 (*a*) given written consent to the Public Guardian serving any document permitted or required by this Act using that manner of service; and

 (*b*) provided the person’s mobile telephone number to the Public Guardian for this purpose.

(6)  Where a person has given the person’s written consent to the Public Guardian under subsection (5)(*a*) and provided the person’s mobile telephone number to the Public Guardian under subsection (5)(*b*), and there is a change to the person’s mobile telephone number, the person must, as soon as practicable but not later than the prescribed period, give notice to the Public Guardian of such change in any manner and form that the Public Guardian requires.

(7)  The following notices may not be served in the manner mentioned in subsection (2)(*g*)(ii), (3)(*e*)(ii) or (4)(*e*)(ii):

 (*a*) a notice under paragraph 6 of the First Schedule;

 (*b*) a notice of cancellation of registration of an instrument as a lasting power of attorney under paragraph 16(2) of the First Schedule;

 (*c*) a notice to inform a person of the Public Guardian’s refusal to register the person as a professional deputy under section 25A;

 (*d*) a notice of intention to cancel the registration of a professional deputy under section 25A(5);

 (*e*) a notice of intention to rectify a register under section 33A(2) of the Act.

(8)  Service of a document on a person under this section takes effect —

 (*a*) if the document is sent by prepaid registered post — on the second day after the day the document was posted (even if it is returned undelivered);

 (*b*) if the document is sent by fax and a notification of successful transmission is received — on the day of the transmission;

 (*c*) if the document is sent by email — at the time that the email becomes capable of being retrieved by the person at the email address of the person;

 (*d*) if the document is sent to the person’s account with the electronic transaction system — at the time when an electronic record of the document reaches the person’s account.

(9)  This section does not apply to documents to be served in proceedings in court for an offence or other matter under this Act.

(10)  In this section —

“business address” means —

 (*a*) in the case of an individual, the individual’s usual or last known place of business in Singapore; and

 (*b*) in the case of a partnership (other than a limited liability partnership), the partnership’s principal or last known place of business in Singapore;

“email address” means the last email address given by the addressee concerned to the Public Guardian as the email address for the service of documents under this Act;

“mobile telephone number” means the last mobile telephone number given by the addressee concerned to the Public Guardian as the mobile telephone number for the service of an electronic notice under subsection (2)(*g*)(ii), (3)(*e*)(ii) or (4)(*e*)(ii);

“residential address” means an individual’s usual or last known place of residence in Singapore.”.

Amendment of section 46

**12.**  Section 46 of the principal Act is amended —

 (*a*) by deleting the word “and” at the end of subsection (2)(*a*);

 (*b*) by deleting the full-stop at the end of paragraph (*b*) of subsection (2) and substituting a semi-colon, and by inserting immediately thereafter the following paragraphs:

 “(*c*) prescribe the form and manner in which any prescribed notice is required to be given by any person to the Public Guardian, or to be given by the donor to the donee or vice versa under or for the purposes of this Act;

 (*d*) prescribe the persons who may be given access by the Public Guardian to view a lasting power of attorney on the electronic transaction system, and the requirements that must be satisfied before the Public Guardian may give such access; and

 (*f*) contain supplementary and incidental provisions as appear to the Minister to be appropriate for carrying out the purposes of Part IIIA.”; and

 (*c*) by inserting, immediately after subsection (2), the following subsection:

“(3)  For the purposes of subsection (2)(*c*), a different form and manner may be prescribed for any notice to be given to the Public Guardian or donor or donee under different circumstances under or for the purposes of the Act.”.

Amendment of First Schedule

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

 (*a*) by deleting the words “Sections 11(2) and (3), 12(6) and (7), 16(1)” in the schedule reference and substituting the words “Sections 10E(1) and (2)(*b*), 11(2)(*b*)(i) and (ii), (2A) and (3), 12(6) and (7), 16(1), 43C(7)”;

 (*b*) by deleting sub­‑paragraph (*a*) of paragraph 1(1) and substituting the following sub‑paragraph:

 “(*a*) subject to paragraph 3 —

 (i) it is made using the electronic transaction system and is in the prescribed form provided in the electronic transaction system; or

 (ii) in a case where section 11(2A) applies — it is in any of the forms provided at the prescribed website;”;

 (*c*) by deleting the word “and” at the end of sub‑paragraph (*b*) of paragraph 1(1), and by inserting immediately thereafter the following sub‑paragraph:

 “(*ba*) the donor executes the instrument in the presence of a witness, who must be a person mentioned in paragraph 2(1)(*e*), and must attest the donor’s execution of the instrument; and”

 (*d*) by deleting sub‑paragraph (2) of paragraph 1;

 (*e*) by inserting, immediately after paragraph 1, the following paragraph:

“Remote witnessing of execution of electronic instrument by donor

1A.—(1) For the purposes of paragraph 1(1)(*ba*), if the Public Guardian has given prior approval on an application made under sub‑paragraph (2), the requirement that the donor execute the instrument in the presence of a witness may be met by the witness witnessing the donor’s execution of the electronic instrument via a live video or live television link and by using a method of accessing the electronic instrument which enables the witness to view the contents of the instrument being executed and to attest the execution on the same instrument.

(2)  Upon an application by the donor, the Public Guardian may grant approval for the donor to execute the instrument in the virtual presence of a witness in accordance with sub‑paragraph (1) and the prescribed requirements, if the Public Guardian is satisfied that there is good reason why the donor cannot appear physically before the person mentioned in paragraph 2(1)(*e*) to execute the electronic instrument.

(3)  Where the Public Guardian refuses to grant an application under sub-paragraph (2), the Public Guardian must, if requested to do so by the donor, state in writing the reasons for the Public Guardian’s refusal.

 (*f*) by inserting, immediately after the words “by the donee” in paragraph 2(1)(*d*), the words “and replacement donee (if any)”;

 (*g*) by deleting the full-stop at the end of sub‑paragraph (*e*) of paragraph 2(1) and substituting the words “; and”, and by inserting immediately thereafter the following sub‑paragraph:

 “(*f*) a statement by the person mentioned in sub‑paragraph (*e*) that the person witnessed the donor’s execution of the instrument.”;

 (*h*) by inserting, immediately after the words “prescribed website” in paragraph 3(1), the words “or the electronic transaction system (as the case may be)”;

 (*i*) by inserting, immediately after the words “prescribed website” in paragraph 3(2), the words “or the electronic transaction system (as the case may be)”;

 (*j*) by deleting sub‑paragraph (3) of paragraph 3 and substituting the following sub-paragraph:

“(3)  To avoid doubt, an instrument is treated as being made in a form for the instrument provided at the prescribed website or the electronic transaction system (as the case may be), if it complies with the form that was provided at the prescribed website or the electronic transaction system (as the case may be) at the time of its making.”;

 (*k*) by deleting paragraph 4 and substituting the following paragraph:

“Applications and procedure for registration

4.—(1) An application to the Public Guardian for the registration of an instrument that is intended to create a lasting power of attorney must be made —

 (*a*) within 6 months (or any longer period determined by the Public Guardian if the Public Guardian is satisfied that there is good reason for the delay), after the date on which the donor executes the instrument;

 (*b*) using the electronic transaction system or, in a case where section 10C(2) or 11(2A) applies, in the form provided at the prescribed website; and

 (*c*) by the donor.

(2)  An application made under sub‑paragraph (1) must be accompanied by the instrument.

(3)  Unless waived by the Public Guardian in any particular case, the prescribed fee for the registration of the instrument must be paid in the manner specified by the Public Guardian, within the prescribed period (or any longer period determined by the Public Guardian if the Public Guardian is satisfied that there is good reason for the delay).

(4)  The longer period determined by the Public Guardian under sub‑paragraph (1)(*a*) or (3) must not exceed 12 months.

(5)  If the prescribed fee is not paid in accordance with sub‑paragraph (3), the application is treated as not having been made.

(6)  Subject to paragraphs 10 to 12, the Public Guardian must register the instrument as a lasting power of attorney at the end of the prescribed period if —

 (*a*) the application complies with sub‑paragraphs (1), (2) and (3); and

 (*b*) the Public Guardian is not aware that any of the following events has occurred:

 (i) the donor has passed away;

 (ii) the instrument is revoked as a result of the donor’s bankruptcy;

 (iii) the donor has revoked the instrument;

 (iv) the instrument is revoked as a result of an event mentioned in section 15(5)(*a*), (*b*), (*c*) or (*d*).

(7)  A person who, in an application for registration, makes a statement which he or she knows to be false in a material particular shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years or to both.”.

 (*l*) by deleting the words “paragraph 4(2)(*a*)” in paragraph 6 and substituting the words “paragraph 4(1);

 (*m*) by deleting paragraph 7;

 (*n*) by deleting the words “or 7” in paragraph 8;

 (*o*) by deleting sub-paragraph (1) of paragraph 10 and substituting the following sub‑paragraph:

“(1)  If it appears to the Public Guardian that an instrument is not made in accordance with section 12A and this Schedule or, in a case where section 11(2A) applies, in accordance with this Schedule, the Public Guardian must not register the instrument unless the court directs the Public Guardian to do so.”.

 (*p*) by deleting the words “or 7(2)(*b*)” in paragraph 12(1)(*a*) and (3)(*a*);

 (*q*) by deleting paragraph 13;

 (*r*) by deleting sub‑paragraph (2) of paragraph 15;

 (*s*) by deleting sub‑paragraph (1) of paragraph 16 and substituting the following sub‑paragraph:

“(1)  The Public Guardian must cancel the registration of an instrument as a lasting power of attorney —

 (*a*) upon receipt of a notice mentioned in section 15(9), if the Public Guardian is satisfied that the donor has taken such steps as are necessary in law to revoke the lasting power of attorney; or

 (*b*) on being satisfied that the power has been revoked —

 (i) as a result of the donor’s bankruptcy;

 (ii) as a result of the donor’s death; or

 (iii) on the occurrence of an event mentioned in section 15(5)(*a*), (*b*), (*c*) or (*d*).”;

 (*t*) by deleting the word “cancelled” in paragraph 19 and substituting the word “destroyed”;

 (*u*) by inserting, immediately above paragraph 20, the following paragraph:

“Forms

19A.  A reference to a numbered form in paragraphs 20, 21 and 22 is a reference to the current version of the form bearing the corresponding number set out on the prescribed website or electronic transaction system.”;

 (*v*) by inserting, immediately after the words “registered instrument” in paragraph 20, the words “that is in Form 1,”;

 (*w*) by renumbering paragraph 20 as sub-paragraph (1) of that paragraph, and by inserting immediately thereafter the following sub‑paragraph:

“(2)  If in the case of a registered instrument that is in Form 2, it appears to the Public Guardian that an event that is identified in the registered instrument as one which would result in the revocation of a lasting power of attorney in relation to the donor’s property and affairs (but not in relation to other matters) has occurred, the Public Guardian must attach to the instrument a note stating this fact.”;

 (*x*) by inserting, immediately after the words “registered instrument” in paragraph 21, the words “that is in Form 1,”;

 (*y*) by renumbering paragraph 21 as sub-paragraph (1) of that paragraph, and by inserting immediately thereafter the following sub‑paragraph:

“(2)  If in the case of a registered instrument that is in Form 2, it appears to the Public Guardian that an event that is identified in the registered instrument as one which would —

 (*a*) terminate the appointment of the donee; but

 (*b*) not revoke the instrument,

has occurred, the Public Guardian must attach to the instrument a note stating this fact.”;

 (*z*) by inserting, immediately after the words “registered instrument” in paragraph 22, the words “that is in Form 1,”;

 (*za*) by renumbering paragraph 22 as sub-paragraph (1) of that paragraph, and by inserting immediately thereafter the following sub‑paragraph:

“(2)  If in the case of a registered instrument that is in Form 2, it appears to the Public Guardian that an event that is identified in the registered instrument as one which would replace the donee under the terms of the instrument has occurred, the Public Guardian must attach to the instrument stating this fact.”;

 (*zb*) by deleting paragraph 23A;

 (*zc*) by deleting the words “paragraph 20” in paragraph 24 and substituting the words “paragraph 10(6), 20”; and

 (*zd*) by deleting sub‑paragraph (2) of paragraph 25.

Related amendment to Electronic Transactions Act

**14.**  The First Schedule to the Electronic Transactions Act (Cap. 88) is amended by inserting, immediately after the words “resulting trusts” in the second column of item 3, the words “and a lasting power of attorney defined under section 2(1) of the Mental Capacity Act (Cap. 177A)”.

Transitional provisions

**15.**—(1)   Despite section 4, section 11 of the principal Act as in force immediately before the commencement of section 4 continues to apply to or in relation to any instrument conferring authority of the kind mentioned in section 11(1) of the principal Act executed by a donor before that date.

(2)  Despite section 13(*b*), (*c*), (*d*), (*f*) to (*j*) and (*zd*), Parts I and V of the First Schedule to the principal Act as in force immediately before the date of commencement of section 13(*b*), (*c*), (*d*), (*f*) to (*j*) and (*zd*) of this Act continue to apply to an instrument conferring authority of the kind mentioned in section 11(1) of the principal Act that is executed before that date.

(3)  Despite section 13(*k*) to (*r*), Part II of the First Schedule to the principal Act as in force immediately before the date of commencement of section 13(*k*) to (*r*) of this Act continues to apply to or in relation to —

 (*a*) an application that is made under paragraph 4(1) of the First Schedule to the principal Act as in force immediately before that date and is pending before the Public Guardian on that date; or

 (*b*) an application for the registration of an instrument intended to create a lasting power of attorney, where that instrument conferring authority of the kind mentioned in section 11(1) of the principal Act was executed before that date.

(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 saving or transitional nature consequent on the enactment of that provision as the Minister may consider necessary or expedient.

EXPLANATORY STATEMENT

This Bill seeks to

EXPENDITURE OF PUBLIC MONEY

This Bill will involve the Government in extra financial expenditure, the exact amount of which cannot at present be ascertained.

Note 20:Jaime/201022Amendment Bill-(v3.34)(Jaime221020)(clean)