

CERTIFYING A LASTING POWER OF ATTORNEY UNDER THE MENTAL CAPACITY ACT (2008)

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The Mental Capacity Act (MCA) passed in 2008 in Singapore allowed for the setting up of a Lasting Power of Attorney (LPA), which enables an adult competent individual (the “donor”) to plan ahead for his/her future needs by appointing one or more adult competent individuals (the “donees”) to make decisions and act on his/her behalf, should he/she lose the mental capacity to make those decisions in the future. The appointed donee is empowered to act in two broad areas of personal welfare, which includes decisions relating to daily activities and accommodation, as well as property and affairs, which includes decisions relating to financial matters, property and assets.

Applying due diligence in assessment

The LPA certificate issuer (CI) has to determine the potential donor’s mental capacity in order to make the relevant decisions relating to the setting up of the LPA at the time of

the assessment, and also to ensure that the potential donor has not been coerced or deceived into making the LPA. The assessment by the CI should always be thorough and rigorous, but they should take even more care in their assessment if they notice possible “red flags” in the case. These may occur when the circumstances of the potential donor are very complex; when there are differences within the family with different family members having dissenting views regarding the LPA; or when the assets involved are very large.

The potential donee generally does not have to be present for the assessment unless specifically requested by the CI; but for the more complex cases, it would be good to involve them. The CI may only issue the certificate if the potential donor is assessed to have the mental capacity to set up the LPA and understand its purpose and the powers that will be given to the potential donee should the donor lose his/her mental capacity in the future. The CI therefore has a duty to undertake the assessment with diligence and perform this to

the required professional standard. The completed LPA form is then submitted to the Office of the Public Guardian (OPG), who will verify the form and accompanying documents. The LPA will be registered after three weeks if there are no objections received in that period.

LPA forms

There are two LPA forms available. LPA Form 1 is the standard form that most donors will use to grant their donees general powers with some basic restrictions. LPA Form 2 is for donors who wish to grant their donees customised powers, and this will need the assistance of a lawyer to draft the annex to the form. To set up the LPA using either of these forms, the potential donor will need to see an LPA CI who has to be an accredited medical practitioner, a practising lawyer or a registered psychiatrist.

Recent changes to the process and procedure

The MCA (2008) was amended in 2021 to allow the registering of LPAs online, with the changes

coming into effect later this year. The Office of the Public Guardian Online (OPGO) system¹ makes it easier by using an online form instead of the paper form used currently. To ensure security, the system requires the CI to obtain an access code from the donor when retrieving the online copy of the LPA form from the OPGO system. The CI is then able to go through the LPA form with the donor and complete the required sections. This allows for digital signing of the completed LPA form without the requirement for the red seals which are necessary in the current process. It also allows the CI to submit the LPA form on behalf of the donor through the OPGO system. The OPG is currently conducting training sessions to familiarise CIs with the OPGO system and recently held a joint training webinar session with SMA on 26 February 2022. We look forward to you joining us on the forthcoming webinars! ♦

References

1. Ministry of Social and Family Development. Office of the Public Guardian. Available at: <https://bit.ly/32p34ji>.



Inter-professional webinar on 30 April 2022

Issuing certificates for the LPA may seem a daunting task to some but it need not be so. With adequate training and familiarity with the process, CIs may undertake their roles with expertise and confidence. To support CIs in this regard, the SMA Centre for Medical Ethics and Professionalism, in collaboration with the College of Psychiatrists, Academy of Medicine,

Singapore, has partnered with the Law Society of Singapore to conduct a joint training webinar titled “**Certifying a Lasting Power of Attorney under the Mental Capacity Act (2008)**” on **30 April 2022**. All interested doctors and lawyers are welcome.

The webinar will introduce the basic concepts as well as explore the subtleties in the assessment of mental capacity, and alert CIs to the potential “red flags” to look out for in their assessments. It will be conducted by doctors, lawyers and other professionals experienced in this area of work.

For programme details and to register, please scan the QR code on the right or contact Ms Jayanthi at cme@sma.org.sg.



<https://bit.ly/36ONNdf>

2 CME points

(subject to Singapore Medical Council's approval)

