

Law Reform Commission

Consultation paper on *Enduring Powers of Attorney*

Press release

The Law Reform Commission today [Monday, 30 April 2007] published a consultation paper seeking the public's views on proposals to simplify the requirements for executing an enduring power of attorney.

A power of attorney is a legal instrument that is used to delegate legal authority to another. By executing a power of attorney, the donor of the power gives legal authority to another person (the attorney) to make property, financial and other legal decisions on his behalf, a spokesman for the Law Reform Commission said.

A conventional power of attorney can only be made by a person who is mentally competent, and any such power of attorney will lapse if the donor subsequently becomes mentally incompetent. It may be in just such circumstances, however, that the donor of the power would want his attorney to be able to act for him. To meet that difficulty, the Enduring Powers of Attorney Ordinance (Cap 501) allows a special type of power of attorney, an "enduring power of attorney" (EPA), to be executed while the donor of the power is mentally capable but which continues to have effect after the donor becomes incapable. An EPA can apply only to decisions about the donor's property and financial affairs and cannot be used to delegate decisions about the donor's health care.

The spokesman said there are no requirements that a conventional power of attorney should be witnessed by a solicitor or a doctor, or, indeed, by anyone at all. In contrast, section 5(2)(a) of the EPA Ordinance requires that an enduring power of attorney must be signed in the presence of a solicitor and a medical practitioner. Since the Ordinance came into effect on 1 July 1997, only a handful of EPAs have been registered. This contrasts with the position in other jurisdictions and it has been suggested that the low take-up rate in Hong Kong may be caused at least in part by the cumbersome requirement that an EPA be executed in the simultaneous presence of a medical practitioner and a solicitor, the spokesman noted.

The spokesman said the consultation paper presents two options for change. The first is to remove the requirement for a medical witness altogether, and the second is to retain the requirement, but to allow the doctor and the solicitor to sign the EPA at different times.

In addition, the consultation paper seeks views as to whether consideration should be given to extending the possible scope of EPAs to include decisions about the donor's personal care, and whether the existing statutory form of EPA should be simplified. The consultation paper contains a suggested draft of a simplified form.

The Commission invites comments on the specific options and questions set out in the consultation paper, but would welcome any views generally on the present requirements for executing an enduring power of attorney.

The consultation period will last until 30 June 2007.

Copies of the consultation paper are available on request from the Secretariat of the Law Reform Commission at 20/F Harcourt House, 39 Gloucester Road, Wanchai, Hong Kong. The consultation paper can also be accessed on the Commission's website at <www.hkreform.gov.hk>.