

**立法會**  
**Legislative Council**

LC Paper No. CB(2)2605/10-11  
(These minutes have been seen  
by the Administration)

Ref : CB2/BC/5/10

**Bills Committee on  
Enduring Powers of Attorney (Amendment) Bill 2011**

**Minutes of the first meeting  
held on Friday, 17 June 2011, at 10:45 am  
in Conference Room B of the Legislative Council Building**

**Members present** : Dr Hon Margaret NG (Chairman)  
Hon LAU Kong-wah, JP  
Hon Miriam LAU Kin-ye, GBS, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon Cyd HO Sau-lan  
Dr Hon LEUNG Ka-lau  
Hon CHEUNG Kwok-che  
Dr Hon PAN Pey-chyou

**Public Officers attending** : Item II

Mr Peter WONG  
Deputy Solicitor General (General)  
Department of Justice

Mr W C SUEN  
Senior Assistant Law Draftsman  
Department of Justice

Mr LEE Tin-yan  
Senior Government Counsel  
Department of Justice

Mr Ken FUNG  
Government Counsel  
Department of Justice

Mr Jacky CHAN  
Government Counsel  
Department of Justice

**Clerk in attendance** : Ms Amy YU  
Chief Council Secretary (2)6

**Staff in attendance** : Miss Carrie WONG  
Assistant Legal Adviser 4

Ms Judy TING  
Council Secretary (2)6

Ms Camy YOONG  
Legislative Assistant (2)6 (Acting)

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Action

**I. Election of Chairman**

Dr Margaret NG was elected Chairman of the Bills Committee.

**II. Meeting with the Administration**

[LP 699/00C XIII, LC Paper Nos. CB(3)745/10-11, LS63/10-11, CB(2)2093/10-11(02) to (04) and Report of the Law Reform Commission of Hong Kong on Enduring Powers of Attorney published in March 2008 and its Executive Summary]

2 The Bills Committee deliberated (index of proceedings attached at **Annex**).

Follow-up actions required of the Administration

Admin

3 The Administration was requested to provide written responses to the following issues -

- (a) legal test for the revocation of an enduring power of attorney ("EPA") and in particular, whether the execution of a later EPA would necessarily revoke an earlier EPA;

Action

- (b) circumstances under which a power of attorney would be revoked at common law as referred to in section 13(1)(g) of the Enduring Powers of Attorney Ordinance (Cap. 501) ("EPA Ordinance");
- (c) clarification on whether the document which was intended to take effect as an EPA would take effect as an ordinary power of attorney after the medical certification by a registered medical practitioner but before it was signed by a solicitor as required by the new section 5 of the EPA Ordinance; and
- (d) clarification on the point of time when EPAs would commence.

Admin

4 The Administration was also requested to consider members' views that donors should be reminded in the new statutory EPA forms of the time of commencement and the legal effects of the EPA once it was executed.

**III. Any other business**

5 The Bills Committee agreed that the next meeting would be held on Monday, 4 July 2011, at 2:30 pm.

6 The meeting ended at 12:45 pm.

Council Business Division 2  
Legislative Council Secretariat  
9 September 2011

**Proceedings of the first meeting of the  
Bills Committee on Enduring Powers of Attorney (Amendment) Bill 2011  
on Friday, 17 June 2011, at 10:45 am  
in Conference Room B of the Legislative Council Building**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
000000 - 000500	Dr Margaret NG Ms Cyd HO Ms Audrey EU	Election of Chairman	
000501 - 000740	Chairman	Opening remarks	
000741 - 001349	Chairman Admin	Briefing by the Administration on the Bill  Objects of the Bill; differences in views on the legislative proposals between the Law Society of Hong Kong on the one hand and the medical sector, the social welfare sector and the Hong Kong Bar Association on the other.	
001350 - 001946	Chairman Ms Audrey EU Admin	Ms Audrey EU enquired about the rationale for the requirement of certification by a registered medical practitioner for the creation of an enduring power of attorney ("EPA"), pointing out that no such requirement applied to the making of a will.  The Administration's explanation that certification of the donor's mental capacity by a registered medical practitioner was required for the making of an EPA as it was expected that the common users of EPA were persons whose mental state would likely deteriorate in the future and a registered medical practitioner would be in the best position to assess a donor's mental capacity.  Whether the execution requirements for the making of an EPA could be further streamlined with a view to lowering the cost and making the procedure less cumbersome.	
001947 - 002236	Chairman Ms Cyd HO Admin	Ms Cyd HO's view that medical social workers working in Government clinics and hospitals should assist in making arrangements for the signing of EPAs by patients whose mental state would likely deteriorate.  The Administration advised that it recognized the importance of enhancing public awareness and understanding of the EPA concept. Promotional pamphlets would be prepared for distribution by professional bodies and non-governmental organizations in the medical, legal and social welfare sectors.	

Time marker	Speaker	Subject(s)	Action Required
002237 - 002415	Chairman Admin	The existing requirements for the execution of an EPA under section 5(2) of the EPA Ordinance (Cap. 501) that an EPA be signed before a registered medical practitioner and a solicitor who must both be present at the same time.	
002416 - 003313	Ms Audrey EU Admin Chairman	The roles and responsibilities of a solicitor in the execution of an EPA include -  (a) preparing the necessary documents;  (b) ensuring compliance with the legal requirements for the execution of an EPA;  (c) explaining the legal effects of the EPA to the donor; and  (d) certifying that the donor appeared to be mentally capable when signing the EPA.	
003314 - 003505	Chairman Ms Cyd HO Ms Audrey EU Admin	Ms Cyd HO indicated support for retaining the medical certification requirement.  Ms Cyd HO considered it important to facilitate the execution of EPAs by elderly people at affordable fees.	
003506 - 004149	Chairman Admin	The new statutory EPA forms in the proposed Schedules 1 and 2 to the Bill were considered.  The Administration's explanation on the rationale for setting the time limit between medical certification by a registered medical practitioner and the signing of an EPA by the solicitor and the donor at 28 days as required by the new section 5 of the EPA Ordinance.	
004150 - 004519	Ms Audrey EU Admin Chairman	Ms Audrey EU enquired whether a donor could execute more than one EPA. The Administration advised that the EPA Ordinance did not prohibit the grant of simultaneous or successive EPAs.	
004520 - 004835	Ms Audrey EU Admin Chairman	Circumstances under which an EPA would be revoked as provided under section 13(1) of the EPA Ordinance.	
004836 - 005506	Ms Cyd HO Admin Chairman	Sections 10 and 12 of the EPA Ordinance concerning respectively the commencement of EPAs and the attorney's duties and liabilities towards the donor of an EPA.  Noting the Administration's advice that an EPA would take effect immediately upon execution unless otherwise stated in the EPA, Ms Cyd HO	<b>Admin to consider Ms HO's views</b>

Time marker	Speaker	Subject(s)	Action Required
		<p>considered it important to alert donors of the same in the EPA form with a view to protecting the donor's interests.</p> <p>The Chairman expressed concern that paragraph 1 under "Information you must read" of the proposed new statutory EPA forms in the proposed Schedules 1 and 2 might mislead a donor into thinking that an EPA would take effect only when he/she became mentally incapable. She considered that donors should be alerted at the beginning of the form to the fact that an EPA would take effect immediately upon execution unless a restriction on the timing of its commencement had been stated in the EPA form.</p>	<p>(paragraph 4 of the minutes refers)</p> <p><b>Admin to consider the Chairman's views</b> (paragraph 4 of the minutes refers)</p>
005507 - 010802	Ms Audrey EU Admin Chairman	<p>The exact point of time when an EPA would commence</p> <p>Whether the execution of a later EPA would automatically revoke an earlier EPA; circumstances under which a power of attorney would be revoked at common law as referred to in section 13(1)(g) of the EPA Ordinance.</p>	<p><b>Admin to provide a written response</b> (paragraphs 3(a) and 3(b) of the minutes refers)</p>
010803 - 012003	Dr LEUNG Ka-lau Admin Chairman	<p>Dr LEUNG Ka-lau expressed support for retaining the medical certification requirement as solicitors did not have the medical expertise to assess the mental capacity of donors.</p> <p>Dr LEUNG Ka-lau expressed concern that the mental state of a donor might deteriorate within the 28-day time limit between medical certification by a registered medical practitioner and the signing of an EPA by the solicitor and the donor. He suggested that consideration be given to shortening the 28-day time limit and flexibility be allowed for medical certification by a registered medical practitioner to take place after the signing of the EPA by a solicitor.</p> <p>The Administration's response was that -</p> <p>(a) the proposed time limit of 28 days was set having regard to the views of the consultees. Representatives of the social welfare sector considered that 28 days would allow reasonable time for making logistical arrangements for the signing of an EPA by a registered medical practitioner and a solicitor. Representatives from the medical sector found the proposed time frame acceptable; and</p>	

Time marker	Speaker	Subject(s)	Action Required
		(b) the proposed sequence of signature by the registered medical practitioner before the solicitor was based on the recommendation of the Law Reform Commission in its report on EPA. Under the proposal, the solicitor would have to be satisfied that the donor had the necessary capacity before he or she could sign the certificate, so the solicitor could act as the final gatekeeper to ensure compliance with the legal requirements for the execution of an EPA. If there were grounds for doubting the mental capacity of a donor at the time of signing the EPA, medical opinion would be sought.	
012004 - 012555	Ms Miriam LAU Chairman Admin	Ms Miriam LAU objected to the suggestion of allowing medical certification to take place after the signing of the EPA by the solicitor.	
012556 - 013044	Ms Cyd HO Chairman	Ms Cyd HO reiterated her view that a reminder should be added to the EPA forms to alert donors of the legal effects of the EPA once it was executed.	<b>Admin to consider Ms HO's views</b> (paragraph 4 of the minutes refers)
013045 - 014136	Ms Audrey EU Chairman Ms Miriam LAU Dr LEUNG Ka-lau Mr LAU Kong-wah Ms Cyd HO Admin	<p>Members generally agreed on the need to retain the medical certification requirement for the execution of an EPA.</p> <p>Expression of views on the proposed 28-day time limit and sequence of signature by a registered medical practitioner and a solicitor.</p> <p>Ms Audrey EU shared the view that consideration could be given to shortening the proposed 28-day time limit, pointing out that there were cases where the mental capacity of the donor would deteriorate rapidly within a short period of time.</p> <p>Mr LAU Kong-wah considered that medical certification by a registered medical practitioner should be available before the signing of the EPA by the donor and the solicitor, as the solicitor had the responsibility to ensure that the donor had the mental capacity to sign the EPA.</p>	
014137 - 014514	Dr PAN Pey-chyou	Different roles and responsibilities of the registered medical practitioner and the solicitor in the execution of an EPA.	
014515 - 014713	Ms Miriam LAU	Ms Miriam LAU reiterated her view that medical certification by a registered medical practitioner should be available prior to the signing of the EPA by the solicitor.	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
014714 - 015843	Chairman Mr CHEUNG Kwok-che Ms Audrey EU Admin Ms Miriam LAU Dr LEUNG Ka-lau	The need to invite deputations' views on the Bill.  Whether the document which was intended to take effect as an EPA would take effect as an ordinary power of attorney after the medical certification by a registered medical practitioner but before it was signed by a solicitor; the time of commencement of EPAs.  Date of next meeting	<b>Admin to provide a written response</b> (paragraphs 3(c) and 3(d) of the minutes refers)

Council Business Division 2  
Legislative Council Secretariat  
9 September 2011