

立法會
Legislative Council

LC Paper No. CB(3) 263/11-12

Ref : CB(3)/B/SJ/2 (10-11)

Tel : 3919 3307

Date : 15 December 2011

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 21 December 2011

Enduring Powers of Attorney (Amendment) Bill 2011

Committee stage amendments

The Second Reading debate on the above Bill will be resumed at the Council meeting of 21 December 2011. Subject to the Bill receiving a Second Reading, the President has given permission for the Secretary for Justice to move amendments to the Bill at its Committee stage.

2. As directed by the President, the amendments are attached for Members' consideration.

(Ms Jessica CHAN)
for Clerk to the Legislative Council

Encl.

COMMITTEE STAGE

Amendments to be moved by the Secretary for Justice

<u>Clause</u>	<u>Amendment Proposed</u>
2	By deleting “3” and substituting “3, 3A”.
3(5)	In the proposed section 5(2)(d)(iii), in the Chinese text, by deleting “確認該文書是在授權人在場並在其指示下由他人” and substituting “該文書是在授權人在場並在其指示下由他人代其”.
3(7)	In the proposed section 5(2)(e)(iii), in the Chinese text, by deleting “確認該文書是在授權人在場並在其指示下由他人” and substituting “該文書是在授權人在場並在其指示下由他人代其”.
New	By adding— “3A. Section 10 amended (Commencement) (1) Section 10— Renumber the section as section 10(1). (2) After section 10(1)— Add “(2) To avoid doubt, an enduring power does not commence as a power of attorney before it is executed. (3) For the purposes of subsections (1)(b) and (2), an enduring power is executed when it is duly signed before the solicitor in compliance with the requirements in

section 5.

- (4) Subsections (2) and (3) do not affect any enduring power executed before the commencement date of the Enduring Powers of Attorney (Amendment) Ordinance 2011 (of 2011).”.”.

9 In the proposed section 4(2), by deleting “donor becoming mentally incapable” and substituting “donor’s mental incapacity”.

10(1) In the proposed section 5(2A), in the Chinese text, by deleting “事預” and substituting “事項”.

12 (a) In the proposed Schedule 1, under the heading “**Information you must read**”, by adding—

“13. This form takes effect as an EPA in accordance with section 10 of the Enduring Powers of Attorney Ordinance (Cap. 501) when it is signed by you or the person signing on your behalf and under your direction before the solicitor. You should note that unless and until this form is so signed, it has no effect either as an EPA or an ordinary power of attorney. However, if you wish, you may choose a later date or later event, on which the EPA will take effect. In such case you must specify this later date or event in paragraph 4A of Part A.”.

(b) In the proposed Schedule 1, under the heading “**Form of enduring power of attorney (for appointment of only one attorney)**”, in Part A—

(i) in paragraph 2, by deleting “*If you do, your EPA will not be valid.*” and substituting “*If you do, your EPA will not be valid.*”;

(ii) by adding—

“4A. **Commencement of EPA**

[This EPA takes effect on the date it is signed before the solicitor in paragraph 6 or 7 below. If you want to specify a later date or later event on which this EPA will take effect, please fill in the gap in the sentence marked with an asterisk below. Delete that sentence if you wish this EPA to take effect on the date it is signed before the solicitor.]

*This EPA takes effect on
..... (insert a later date or event).”.

13

(a) In the proposed Schedule 2, under the heading “**Information you must read**”—

(i) in paragraph 3, in the Chinese text, by deleting “個” and substituting “各”;

(ii) by adding—

“14. This form takes effect as an EPA in accordance with section 10 of the Enduring Powers of Attorney Ordinance (Cap. 501) when it is signed by you or the person signing on your behalf and under your direction before the solicitor. You should note that unless and until this form is so signed, it has no effect either as an EPA or an ordinary power of attorney. However, if you wish, you may choose a later date or later event, on which the EPA will take effect. In such case you must specify this later date or event in paragraph 5A of Part A.”.

(b) In the proposed Schedule 2, under the heading “**Form of enduring power of attorney (for appointment of more than one attorney)**”, in Part A—

(i) by deleting paragraph 2 and substituting—

“2. **Whether attorneys must act jointly**

*[You must decide whether your attorneys are to act (a) jointly; or (b) jointly and severally. See paragraph 3 under the heading “**Information you must read**” and delete either (a) or (b) from the statement below. **If you do not, your EPA will***

not be valid.]

My attorneys appointed under paragraph 1 are to act—

(a) jointly.

or

(b) jointly and severally.”;

(ii) in paragraph 3, by deleting “*If you do, your EPA will not be valid.*” and substituting “*If you do, your EPA will not be valid.*”;

(iii) by adding—

“5A. Commencement of EPA

[This EPA takes effect on the date it is signed before the solicitor in paragraph 7 or 8 below. If you want to specify a later date or later event on which this EPA will take effect, please fill in the gap in the sentence marked with an asterisk below. Delete that sentence if you wish this EPA to take effect on the date it is signed before the solicitor.]

*This EPA takes effect on
 (insert a later date or event).”.