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By E-mail

22 June 2011

Miss Carrie WONG
Assistant Legal Adviser
Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong

via Mr Peter Wong, DSG(G)

Dear Miss Wong,

Enduring Powers of Attorney (Amendment) Bill 2011 (the Bill)

Thank you for your letter dated 14 June 2011. We would like to provide the following clarifications on the matters that you raised in your letter.

Clause 3

- (a) In relation to the phrase “the donor acknowledged that” in the proposed section 5(2)(d)(iii), we think the English text of the Bill should remain as it is, but we will propose an amendment at the Committee Stage to delete the second “確認” in the Chinese text to ensure consistency.

- (b) The Administration will propose an amendment in the Committee Stage to add “代其” after “在其指示下由他人” to make it clear that the signature is on behalf of the donor.
- (c) Committee Stage amendments similar to paragraphs (a) and (b) above will be proposed for the proposed section 5(2)(e)(iii).

Clause 9

- (d) Proposed section 4(2) provides for who has the functions of an attorney under an enduring power of attorney in the event of registration of the instrument or the donor becoming mentally incapable. We are of the view that the use of “在…時” is appropriate because the phrase is apt for referring to a state of affairs and reads better than “在...的情況下” here. Therefore, no change is suggested.
- (e) The Administration will propose an amendment in the Committee Stage to replace "the donor becoming mentally incapable" with "the donor's mental incapacity" in the proposed section 4(2).

Clause 10

- (f) We consider that the use of term “同時” is appropriate as it is used here to denote the duality of specifying under both paragraphs of proposed section 5(2). Therefore, no change is suggested. On the other hand, the typographical error is acknowledged and the Administration will propose a Committee Stage amendment to replace “事預” with “事項”.

Clause 11

- (g) We are of the view that the context of proposed section 6(3) makes it clear that the “意向” being referred to is that which has just been mentioned before. Therefore, no change is suggested.

Clause 12*(h)(i) Proposed paragraph 6 of Schedule 1 (similar to proposed paragraph 7 of Schedule 2)*

The legal effect of both texts is the same. Both texts are expressing the same idea with the same amount of substantive information, although in slightly different ways due to linguistic difference. Therefore, we are of the view that no change is required for either text.

(h)(ii) Proposed paragraph 10 of Schedule 1 (similar to proposed paragraph 11 of Schedule 2)

We are of the view that “即使...，亦...” is an appropriate pair of conjunctions in Chinese denoting the syntactic disjunction. Therefore, no change is suggested.

(h)(iii) Proposed paragraph 12 of Schedule 1 (similar to proposed paragraph 13 of Schedule 2)

Proposed paragraph 12 of Schedule 1 uses “上述醫生/律師”，i.e. the “醫生”/“律師” referred to in proposed paragraph 11, as the shorthand for the registered medical practitioner/solicitor before whom the instrument was signed. Therefore, no change is suggested.

(h)(iv) Proposed paragraph 3 of Schedule 2

(A) & (B): We are of the view that "cannot" serves better in this context. Although it is not usual to use "cannot" in legislation, it should be noted that this paragraph is intended to be read by donors, and is explanatory in nature. The modal denotes capability more than a prohibition, which may convey the intended meaning more clearly to the reader. The same reasoning also applies to subparagraph (b), but of course the contrast here is capability and permission. In this connection, you may also wish to note that this

modal is also used in the same context in Annex B of the Law Reform Commission Report on Enduring Powers of Attorney (March 2008) on page 42.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Lee Tin Yan', written in a cursive style.

(Lee Tin Yan)
Senior Government Counsel
Legal Policy Division