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# Enduring Powers of Attorney (Amendment) Bill 2011

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Part 1

Clause 1

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# A BILL

## To

Amend the Enduring Powers of Attorney Ordinance and the Enduring Powers of Attorney (Prescribed Form) Regulation.

Enacted by the Legislative Council.

### Part 1

#### Preliminary

**1. Short title and commencement**

- (1) This Ordinance may be cited as the Enduring Powers of Attorney (Amendment) Ordinance 2011.
  - (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Justice by notice published in the Gazette.
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## Part 2

### Amendments to Enduring Powers of Attorney Ordinance

#### 2. Enduring Powers of Attorney Ordinance amended

The Enduring Powers of Attorney Ordinance (Cap. 501) is amended as set out in sections 3 and 4.

#### 3. Section 5 amended (Mental capacity and formalities for execution of enduring power)

(1) Section 5(2)—

##### Repeal paragraph (a)

##### Substitute

“(a) subject to paragraph (b)—

(i) the donor must sign the instrument creating the enduring power before a registered medical practitioner and a solicitor; and

(ii) the instrument must be signed by the donor before the solicitor either at the same time when it is signed before the registered medical practitioner or at any time after that signing but before the expiry of the period of 28 days after the day on which it is so signed;

(aa) the registered medical practitioner and the solicitor before whom the instrument is signed must each be a person other than the person being appointed as the attorney, the spouse of such person or a person related by blood or marriage to the donor or the attorney;”.

(2) Section 5(2)—

##### Repeal paragraph (b)

##### Substitute

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Clause 3

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“(b) if the donor is physically incapable of signing, any other person, not being the attorney, the spouse of the attorney, the registered medical practitioner or the solicitor before whom the instrument is signed or the spouse of the registered medical practitioner or the solicitor, may sign the instrument on behalf of the donor in the presence, and under the direction, of the donor;”.

(3) Section 5(2), English text—

**Repeal paragraph (c)**

**Substitute**

“(c) the attorney must sign the instrument;”.

(4) Section 5(2)(d)—

**Repeal subparagraph (i).**

(5) Section 5(2)(d)—

**Repeal subparagraph (iii)**

**Substitute**

“(iii) that the instrument was signed in the presence of the solicitor and, if it is signed by the donor, that the donor acknowledged that it was signed voluntarily and, if it is signed on the donor’s behalf, that it was so signed in the presence, and under the direction, of the donor; and”.

(6) Section 5(2)(e)—

**Repeal subparagraph (i).**

(7) Section 5(2)(e)—

**Repeal subparagraphs (ii) and (iii)**

**Substitute**

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- “(ii) that the registered medical practitioner was satisfied that the donor was mentally capable (specifying in the certification that the registered medical practitioner was satisfied that the donor was mentally capable in terms of section 2); and
- (iii) that the instrument was signed in the presence of the registered medical practitioner and, if it is signed by the donor, that the donor acknowledged that it was signed voluntarily and, if it is signed on the donor’s behalf, that it was so signed in the presence, and under the direction, of the donor.”.

**4. Section 18 amended (Regulations)**

Section 18—

**Repeal subsection (3)**

**Substitute**

- “(3) The prescribed form for the instrument creating an enduring power of attorney may provide for the donor to nominate the persons (whose number must not exceed the number specified in the form) to be notified by the attorney before the attorney applies for the registration of the instrument under section 9.”.
-

## Part 3

### Amendments to Enduring Powers of Attorney (Prescribed Form) Regulation

**5. Enduring Powers of Attorney (Prescribed Form) Regulation amended**

The Enduring Powers of Attorney (Prescribed Form) Regulation (Cap. 501 sub. leg. A) is amended as set out in sections 6 to 13.

**6. Section 1A added**

Before section 2—

**Add**

**“1A. Interpretation**

In this Regulation—

*Form 1* (表格1) means the form set out in Schedule 1;

*Form 2* (表格2) means the form set out in Schedule 2.”.

**7. Section 2 substituted**

Section 2—

**Repeal the section**

**Substitute**

**“2. Prescribed form**

(1) An instrument creating an enduring power of attorney which appoints only one attorney must be in Form 1.

(2) An instrument creating an enduring power of attorney which appoints more than one attorney must be in Form 2.

Part 3  
Clause 8

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- (3) If an instrument which purports to create an enduring power of attorney does not contain the explanatory information given under the heading “**Information you must read**” in Form 1 or Form 2, it does not create an enduring power of attorney.
- (4) An enduring power of attorney may include any conditions or restrictions that the donor specifies in paragraph 3 of Part A of Form 1 or paragraph 4 of Part A of Form 2 (as the case requires).
- (5) The form of execution by an attorney may be adapted to provide for execution by a trust corporation.”.

**8. Section 3 substituted**

Section 3—

**Repeal the section**

**Substitute**

**“3. Execution**

- (1) An instrument creating an enduring power of attorney must be signed by both the donor and the attorney, although not necessarily at the same time, in accordance with this section and section 5 of the Ordinance.
- (2) The attorney must sign in the presence of a witness.
- (3) The witness must sign the instrument and provide his or her full name and address in the instrument.
- (4) The donor must not witness the signature of the attorney nor one attorney witness the signature of another attorney.

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- (5) The solicitor and the registered medical practitioner who certify as to the matters specified in sections 5(2)(d) and 5(2)(e) of the Ordinance respectively must provide their full names and addresses in the instrument.
- (6) If, under section 5(2)(b) of the Ordinance, the instrument is signed in the presence, and under the direction, of the donor, paragraph 7 of Part A of Form 1 or paragraph 8 of Part A of Form 2 (as the case requires) must be completed.”.

**9. Section 4 substituted**

Section 4—

**Repeal the section**

**Substitute**

**“4. Execution if more than one attorney is appointed**

- (1) If more than one attorney is appointed and they are to act jointly and severally, then at least one of the attorneys so appointed must sign the instrument for it to take effect as an enduring power of attorney.
- (2) Only an attorney who has signed the instrument has the functions of an attorney under an enduring power of attorney in the event of the registration of the instrument under section 9 of the Ordinance or the donor becoming mentally incapable, whichever first occurs.”.

**10. Section 5 amended (Donor to specify decisions attorney may make)**

- (1) After section 5(2)—

**Add**

Part 3

Clause 11

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“(2A) To avoid doubt, subsection (2) is not to be construed as preventing the donor from specifying under both paragraphs of that subsection.”.

(2) Section 5(3)(d)—

**Repeal**

“his”

**Substitute**

“the donor’s”.

**11. Section 6 substituted**

Section 6—

**Repeal the section**

**Substitute**

**“6. Nomination of persons to be notified**

(1) The donor may, in the instrument, nominate all or any of the following persons to be notified by the attorney applying for the registration of the instrument under section 9 of the Ordinance before the application is made—

(a) the donor;

(b) any attorney who does not join in the application;

(c) a maximum of 2 other persons.

(2) The donor must provide in the instrument the address of any person nominated under subsection (1).

(3) If the donor’s intention is not to make any nomination under subsection (1), the donor must indicate that intention by deleting paragraph 4 of Part A of Form 1 or paragraph 5 of Part A of Form 2 (as the case requires).”.

Part 3

Clause 12

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**12. Schedule substituted**

The Schedule—

**Repeal the Schedule**

**Substitute**

**“Schedule 1**

[s. 1A]

**Form 1**

**Information you must read**

1. This form is a legal document that allows you to create an enduring power of attorney (*EPA*). An EPA enables you to authorize another person (*your attorney*) to act on your behalf in relation to your property and financial affairs. You must use this form if you intend to appoint only one attorney. If you become mentally incapable, your attorney will be able to make decisions for you after your attorney has registered this form with the Registrar of the High Court.
2. If you are a trustee, you should seek legal advice if you want your attorney to act as a trustee on your behalf.
3. You must complete Part A.
4. **Paragraph 1 of Part A:** You must include the name and address of the person you wish to appoint as your attorney at paragraph 1 of Part A. The person you appoint as your attorney must be over 18 years of age and must not be bankrupt or mentally incapable. Your attorney does not have to be a solicitor. Your attorney must complete Part B and sign this form in the presence of a witness.

Part 3

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5. **Paragraph 2 of Part A:** You cannot give your attorney a general authority over all your property and financial affairs. If you do, your EPA will not be valid. Instead, you must specify at paragraph 2 of Part A what you authorize your attorney to do with your property and financial affairs, or the particular property or financial affairs for which you have given your attorney authority to act. For example, you may decide to give your attorney authority only for a particular bank account, or a particular piece of property.

6. **Paragraph 3 of Part A:** You may include any restrictions you like on the authority you give to your attorney. For example, you may include a restriction that your attorney must not act on your behalf until your attorney has reason to believe that you are becoming mentally incapable, or that your attorney must not enter into a contract without first seeking legal advice if its value exceeds a specified amount. You should set out these restrictions at paragraph 3 of Part A.

7. Unless you include a restriction preventing it, your attorney will be able to use any of your money or property to make any provision which you might be expected to make yourself for the needs of your attorney or the needs of other persons. Your attorney will be able to use your money to make gifts, but only for reasonable amounts in relation to the value of your money and property.

8. Your attorney may recover out-of-pocket expenses for acting as your attorney. If your attorney is a professional person, such as an accountant or a solicitor, your attorney may charge for any professional services provided when acting as your attorney.

9. If your attorney has reason to believe that you are, or are becoming, mentally incapable of managing your affairs, your attorney must apply to the Registrar of the High Court to

## Part 3

Clause 12

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register this EPA. Registration will allow your attorney to make decisions for you after you have become mentally incapable.

**10. Paragraph 4 of Part A:** If you would like to be notified before your attorney applies to the Registrar of the High Court to register this EPA, or if you would like other persons to be notified, you must include the names and addresses of the persons to be notified at paragraph 4 of Part A. You can include up to 2 persons to be notified in addition to yourself. If your attorney does not notify you or the persons you have nominated, that does not prevent the registration of your EPA or make it invalid. However, in any legal proceedings relating to the EPA the court may, if it considers it appropriate, draw an adverse inference from the failure to notify you or the nominated persons.

**11. Paragraphs 6, 8 and 9 of Part A:** You must sign this form at paragraph 6 of Part A and fill in the names and addresses of the registered medical practitioner and the solicitor who are present when you sign. If you do not sign in the presence of both the registered medical practitioner and the solicitor at the same time, you must sign the form in the presence of the solicitor no later than 28 days after the date on which you sign in the presence of the registered medical practitioner. The registered medical practitioner and the solicitor will need to complete the certificates at paragraphs 8 and 9 of Part A respectively to certify that you are mentally capable when you sign this form.

**12. Paragraph 7 of Part A:** If you are physically incapable of signing this form yourself, you can direct someone else to sign on your behalf. In this case, paragraph 7 of Part A must be completed and that person must sign at that paragraph in your presence and in the presence of the registered medical practitioner and the solicitor. The person signing on your behalf must not be your attorney, the spouse of your attorney, the

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Clause 12

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registered medical practitioner or the solicitor before whom the instrument is signed or the spouse of the registered medical practitioner or the solicitor.

**Form of enduring power of attorney (for appointment of only one attorney)**

**Part A**

*[This Part must be completed by the person appointing the attorney (**the donor**), except for paragraphs 8 and 9, which must be completed by a registered medical practitioner and a solicitor respectively. You should read the explanatory information given under the heading “**Information you must read**” before you fill it in. Do not sign this form unless you understand what it means.]*

**1. Appointment of attorney by donor**

I, *[your name here]* ..... ,  
holder of *[your identification document here]*..... ,  
of *[your address here]* .....  
.....  
appoint *[your attorney’s name here]* .....  
holder of *[identification document here]* ..... ,  
of *[your attorney’s address here]*.....  
.....  
to be my attorney under the Enduring Powers of Attorney Ordinance (Cap. 501).

**2. Attorney’s authority**

*[You must specify what you authorize your attorney to do. You cannot give a general authority over all your property and financial affairs. If you do, your EPA will not be valid.]*

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*You can either specify at subparagraph (1) what you authorize your attorney to do by ticking any or all of the appropriate boxes, or tick no box, in which case you must list at subparagraph (2) the particular property or financial affairs for which you have given your attorney authority to act. If you have ticked any or all the boxes at subparagraph (1), you may still list at subparagraph (2) any particular property or financial affairs in relation to which you have given your attorney authority to act. You must not make no ticks at subparagraph (1) and list no property at subparagraph (2).]*

(1) My attorney has authority to act on my behalf:

- (a) to collect any income due to me;
- (b) to collect any capital due to me;
- (c) to sell any of my movable property;
- (d) to sell, lease or surrender my home or any of my immovable property;
- (e) to spend any of my income;
- (f) to spend any of my capital; or
- (g) to exercise any of my powers as a trustee.

(2) My attorney has authority to act on my behalf in respect of the following property or financial affairs:  
*[If you want your attorney to act for you only in relation to some of your property or financial affairs, you must list them here.]*

.....

.....

.....

.....

**3. Restrictions on attorney**

This enduring power of attorney is subject to the following conditions and restrictions: *[If you want to put conditions or restrictions on the way your attorney exercises any powers, you must list them here. For example, you may include a restriction that your attorney must not act on your behalf until your attorney has reason to believe that you are becoming mentally incapable. If you do not want to impose any conditions or restrictions, you must delete this paragraph.]*

.....  
.....  
.....

**4. Notification of named persons**

*[If you do not want anyone (including yourself) to be notified of the application for the registration of this EPA, you must delete subparagraphs (1) and (2).]*

(1) My attorney must notify me before applying for the registration of this enduring power of attorney. *[If you do not want to be notified, you must delete this subparagraph.]*

(2) My attorney must notify the following persons before applying for the registration of this enduring power of attorney. *[Fill in the names and addresses of up to 2 persons (other than yourself) to be notified. If you do not want other persons to be notified, you must delete this subparagraph.]*

Name: .....

Address: .....

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Clause 12

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Name: .....

Address: .....

5. **Power to continue**

I intend this enduring power of attorney to continue even if I become mentally incapable.

6. **Signatures**

Signed by me as a deed [*sign here*].....

on [*date*].....

in the presence of [*name and address of registered medical practitioner*] .....

.....

.....

Signed by me as a deed [*sign here*].....

on [*date*].....

in the presence of [*name and address of solicitor*] .....

.....

.....

7. [*If you are physically incapable of signing this form and you direct someone else to sign on your behalf, that person must sign here and paragraph 6 must be deleted.*]

This enduring power of attorney has been signed by [*name of person signing on your behalf*] .....

holder of [*identification document*].....,

of [*address of person signing on your behalf*].....

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.....  
under the direction and in the presence of the donor.

Signed as a deed [*signature of person signing on your behalf*]

.....

on [*date*].....

in the presence of the donor and [*name and address of registered medical practitioner*].....

.....

.....

Signed as a deed [*signature of person signing on your behalf*]

.....

on [*date*].....

in the presence of the donor and [*name and address of solicitor*].....

.....

.....

**8. Certificate by registered medical practitioner**

I certify that:

- (a) I am satisfied that the donor is mentally capable in terms of section 2 of the Enduring Powers of Attorney Ordinance (Cap. 501); and
- (b) this form was signed by the donor in my presence and the donor acknowledged signing it voluntarily. [*If someone else signs this form on the donor's behalf, this statement must be deleted.*]

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(c) this form was signed, in the presence of the donor and me, by *[name of person signing on donor's behalf]* .....  
.....  
on behalf and under the direction of the donor.  
*[If the donor signs this form, this statement must be deleted.]*

Signed by registered medical practitioner .....  
on *[date]*.....

9. **Certificate by solicitor**

I certify that:

- (a) the donor appears to be mentally capable in terms of section 2 of the Enduring Powers of Attorney Ordinance (Cap. 501); and
- (b) this form was signed by the donor in my presence and the donor acknowledged signing it voluntarily. *[If someone else signs this form on the donor's behalf, this statement must be deleted.]*
- (c) this form was signed, in the presence of the donor and me, by *[name of person signing on donor's behalf]* .....  
.....  
on behalf and under the direction of the donor.  
*[If the donor signs this form, this statement must be deleted.]*

Signed by solicitor .....  
on *[date]*.....

Part 3  
Clause 13

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**Part B**

*[This Part must be completed by the attorney.]*

1. I understand that I have a duty to apply to the Registrar of the High Court to register this form under the Enduring Powers of Attorney Ordinance (Cap. 501) when the donor is, or is becoming, mentally incapable.
  
2. I also understand my limited power to use the donor's property to benefit persons other than the donor as provided in section 8(3) and (4) of that Ordinance and also my duties and liabilities under section 12 of that Ordinance.
  
3. Signed by me as a deed *[signature of attorney]* .....  
on *[date]*.....  
in the presence of *[signature and name and address of witness, who must not be the donor]*.....  
.....  
.....  
.....”

**13. Schedule 2 added**

After Schedule 1—

**Add**

## “Schedule 2

[s. 1A]

### Form 2

#### Information you must read

1. This form is a legal document that allows you to create an enduring power of attorney (*EPA*). An EPA enables you to authorize another person to act on your behalf in relation to your property and financial affairs. You must use this form if you intend to appoint more than one person to act on your behalf. If you become mentally incapable, the persons you have appointed (*your attorneys*) will be able to make decisions for you after they have registered this form with the Registrar of the High Court.

2. If you are a trustee, you should seek legal advice if you want your attorneys to act as trustees on your behalf.

3. **Paragraph 2 of Part A:** You must decide whether your attorneys are to act—

- (a) jointly (that is, they must all act together and cannot act separately); or
- (b) jointly and severally (that is, they can all act together but they can also act separately if they wish).

You must indicate your decision at paragraph 2 of Part A. You should note that if your attorneys are to act jointly, on the bankruptcy or death of any one of them this power of attorney becomes revoked under law.

4. You must complete Part A.

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5. **Paragraph 1 of Part A:** You must include the names and addresses of the persons you wish to appoint as your attorneys at paragraph 1 of Part A. The persons you appoint as your attorneys must be over 18 years of age and must not be bankrupt or mentally incapable. Your attorneys do not have to be solicitors. Your attorneys must complete Part B and each of them must sign this form in the presence of a witness.

6. **Paragraph 3 of Part A:** You cannot give your attorneys a general authority over all your property and financial affairs. If you do, your EPA will not be valid. Instead, you must specify at paragraph 3 of Part A what you authorize your attorneys to do with your property and financial affairs, or the particular property or financial affairs for which you have given your attorneys authority to act. For example, you may decide to give your attorneys authority only for a particular bank account, or a particular piece of property.

7. **Paragraph 4 of Part A:** You may include any restrictions you like on the authority you give to your attorneys. For example, you may include a restriction that your attorneys must not act on your behalf until they have reason to believe that you are becoming mentally incapable, or that your attorneys must not enter into a contract without first seeking legal advice if its value exceeds a specified amount. You should set out these restrictions at paragraph 4 of Part A.

8. Unless you include a restriction preventing it, your attorneys will be able to use any of your money or property to make any provision which you might be expected to make yourself for the needs of your attorneys or the needs of other persons. Your attorneys will be able to use your money to make gifts, but only for reasonable amounts in relation to the value of your money and property.

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9. Your attorneys may recover out-of-pocket expenses for acting as your attorneys. If any of your attorneys is a professional person, such as an accountant or a solicitor, that attorney may charge for any professional services provided when acting as your attorney.

10. If your attorneys have reason to believe that you are, or are becoming, mentally incapable of managing your affairs, they must apply to the Registrar of the High Court to register this EPA. Registration will allow your attorneys to make decisions for you after you have become mentally incapable.

11. **Paragraph 5 of Part A:** If you would like to be notified before your attorneys apply to the Registrar of the High Court to register this EPA, or if you would like other persons to be notified, you must include the names and addresses of the persons to be notified at paragraph 5 of Part A. If you have decided that your attorneys may act separately, you may also nominate any of your attorneys not joining in the application to be notified. You can include up to 2 persons to be notified in addition to yourself and any attorney not joining in the application. If your attorneys do not notify you or the persons you have nominated, that does not prevent the registration of your EPA or make it invalid. However, in any legal proceedings relating to the EPA the court may, if it considers it appropriate, draw an adverse inference from the failure to notify you or the nominated persons.

12. **Paragraphs 7, 9 and 10 of Part A:** You must sign this form at paragraph 7 of Part A and fill in the names and addresses of the registered medical practitioner and the solicitor who are present when you sign. If you do not sign in the presence of both the registered medical practitioner and the solicitor at the same time, you must sign the form in the presence of the solicitor no later than 28 days after the date on which you sign in the presence of the registered medical practitioner. The

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registered medical practitioner and the solicitor will need to complete the certificates at paragraphs 9 and 10 of Part A respectively to certify that you are mentally capable when you sign this form.

**13. Paragraph 8 of Part A:** If you are physically incapable of signing this form yourself, you can direct someone else to sign on your behalf. In this case, paragraph 8 of Part A must be completed and that person must sign at that paragraph in your presence and in the presence of the registered medical practitioner and the solicitor. The person signing on your behalf must not be one of your attorneys, the spouse of any one of your attorneys, the registered medical practitioner or the solicitor before whom the instrument is signed or the spouse of the registered medical practitioner or the solicitor.

**Form of enduring power of attorney (for appointment of more than one attorney)**

**Part A**

*[This Part must be completed by the person appointing the attorneys (**the donor**), except for paragraphs 9 and 10, which must be completed by a registered medical practitioner and a solicitor respectively. You should read the explanatory information given under the heading “**Information you must read**” before you fill it in. Do not sign this form unless you understand what it means.]*

**1. Appointment of attorneys by donor**

I, *[your name here]* ..... ,  
holder of *[your identification document here]* ..... ,  
of *[your address here]* .....  
.....

appoint

(a) *[your attorney’s name here]* .....  
holder of *[identification document here]* ..... ,  
of *[your attorney’s address here]*.....  
..... ;

and

(b) *[your attorney’s name here]* .....  
holder of *[identification document here]* ..... ,  
of *[your attorney’s address here]*.....  
.....

*[If you appoint more than 2 attorneys, please add additional subparagraph(s) similar to subparagraphs (a) and (b).]*

to be my attorneys under the Enduring Powers of Attorney Ordinance (Cap. 501).

**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 from the statement below the part that does not apply.]*

My attorneys appointed under paragraph 1 are to act jointly/jointly and severally.

**3. Attorneys’ authority**

*[You must specify what you authorize your attorneys to do. You cannot give a general authority over all your property*

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*and financial affairs. If you do, your EPA will not be valid. You can either specify at subparagraph (1) what you authorize your attorneys to do by ticking any or all of the appropriate boxes, or tick no box, in which case you must list at subparagraph (2) the particular property or financial affairs for which you have given your attorneys authority to act. If you have ticked any or all the boxes at subparagraph (1), you may still list at subparagraph (2) any particular property or financial affairs in relation to which you have given your attorneys authority to act. You must not make no ticks at subparagraph (1) and list no property at subparagraph (2).]*

- (1) My attorneys have authority to act on my behalf:
  - (a) to collect any income due to me;
  - (b) to collect any capital due to me;
  - (c) to sell any of my movable property;
  - (d) to sell, lease or surrender my home or any of my immovable property;
  - (e) to spend any of my income;
  - (f) to spend any of my capital; or
  - (g) to exercise any of my powers as a trustee.

(2) My attorneys have authority to act on my behalf in respect of the following property or financial affairs: *[If you want your attorneys to act for you only in relation to some of your property or financial affairs, you must list them here.]*

.....  
.....  
.....  
.....

**4. Restrictions on attorneys**

This enduring power of attorney is subject to the following conditions and restrictions: *[If you want to put conditions or restrictions on the way your attorneys exercise any powers, you must list them here. For example, you may include a restriction that your attorneys must not act on your behalf until they have reason to believe that you are becoming mentally incapable. If you do not want to impose any conditions or restrictions, you must delete this paragraph.]*

.....  
.....  
.....

**5. Notification of named persons**

*[If you do not want anyone (including yourself) to be notified of the application for the registration of this EPA, you must delete subparagraphs (1), (2) and (3).]*

- (1) My attorneys must notify me before applying for the registration of this enduring power of attorney. *[If you do not want to be notified, you must delete this subparagraph.]*
- (2) Any attorney applying for the registration of this enduring power of attorney must, before the application is made, notify any attorney not joining in the application. *[If you decide that your attorneys may act separately and you do not require any attorney applying for the registration of this EPA to notify any attorney not joining in the application, you must delete this subparagraph.]*
- (3) My attorneys must notify the following persons before applying for the registration of this enduring power of

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attorney. *[Fill in the names and addresses of up to 2 persons (other than yourself or any of your attorneys) to be notified. If you do not want other persons to be notified, you must delete this subparagraph.]*

Name: .....

Address: .....

Name: .....

Address: .....

**6. Power to continue**

I intend this enduring power of attorney to continue even if I become mentally incapable.

**7. Signatures**

Signed by me as a deed *[sign here]*.....

on *[date]*.....

in the presence of *[name and address of registered medical practitioner]* .....

.....

.....

Signed by me as a deed *[sign here]* .....

on *[date]*.....

in the presence of *[name and address of solicitor]* .....

.....

.....

**8. *[If you are physically incapable of signing this form and you direct someone else to sign on your behalf, that person must sign here and paragraph 7 must be deleted.]***

Part 3  
Clause 13

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This enduring power of attorney has been signed by *[name of person signing on your behalf]* .....  
holder of *[identification document here]* ..... ,  
of *[address of person signing on your behalf]*.....  
.....  
under the direction and in the presence of the donor.

Signed as a deed *[signature of person signing on your behalf]*  
.....  
on *[date]* .....  
in the presence of the donor and *[name and address of registered medical practitioner]*.....  
.....  
.....

Signed as a deed *[signature of person signing on your behalf]*  
.....  
on *[date]*.....  
in the presence of the donor and *[name and address of solicitor]*.....  
.....  
.....

**9. Certificate by registered medical practitioner**

I certify that:

- (a) I am satisfied that the donor is mentally capable in terms of section 2 of the Enduring Powers of Attorney Ordinance (Cap. 501); and

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Clause 13

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- (b) this form was signed by the donor in my presence and the donor acknowledged signing it voluntarily. *[If someone else signs this form on the donor's behalf, this statement must be deleted.]*
- (c) this form was signed, in the presence of the donor and me, by *[name of person signing on donor's behalf]* .....  
 .....  
 on behalf and under the direction of the donor. *[If the donor signs this form, this statement must be deleted.]*

Signed by registered medical practitioner .....  
 on *[date]*.....

**10. Certificate by solicitor**

I certify that:

- (a) the donor appears to be mentally capable in terms of section 2 of the Enduring Powers of Attorney Ordinance (Cap. 501); and
- (b) this form was signed by the donor in my presence and the donor acknowledged signing it voluntarily. *[If someone else signs this form on the donor's behalf, this statement must be deleted.]*
- (c) this form was signed, in the presence of the donor and me, by *[name of person signing on donor's behalf]* .....  
 .....  
 on behalf and under the direction of the donor. *[If the donor signs this form, this statement must be deleted.]*

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Signed by solicitor .....  
on [date].....

**Part B**

*[This Part must be completed by the attorneys. If you decide that your attorneys may act separately, then at least one of the attorneys appointed must sign this form for it to take effect as an EPA. An attorney will have the functions of an attorney under this EPA only if that attorney has signed this form.]*

1. We understand that we have a duty to apply to the Registrar of the High Court to register this form under the Enduring Powers of Attorney Ordinance (Cap. 501) when the donor is, or is becoming, mentally incapable.
  
2. We also understand our limited power to use the donor’s property to benefit persons other than the donor as provided in section 8(3) and (4) of that Ordinance and also our duties and liabilities under section 12 of that Ordinance.
  
3. Signed as a deed—
  - (a) by *[signature and name of attorney]*.....  
 .....  
 on *[date]* .....  
 in the presence of *[signature and name and address of witness, who must not be the donor or another attorney of the donor]*.....  
 .....  
 .....  
 .....

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and

(b) by *[signature and name of attorney]*.....

.....

on *[date]*.....

in the presence of *[signature and name and address of witness, who must not be the donor or another attorney of the donor]* .....

.....

.....

.....

*[If you appoint more than 2 attorneys, please add additional subparagraph(s) similar to subparagraphs (a) and (b).]*”.

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### Explanatory Memorandum

The object of this Bill is to implement certain recommendations of the report of the Law Reform Commission of Hong Kong on Enduring Powers of Attorney published in March 2008. The recommendations that the Bill deals with are—

- (a) that the requirement in section 5(2) of the Enduring Powers of Attorney Ordinance (Cap. 501) (*the principal Ordinance*) that an enduring power of attorney must be signed at the same time before a registered medical practitioner and a solicitor should be relaxed, so that an enduring power of attorney may be signed before a solicitor any time after it has been signed before a registered medical practitioner so long as this is done before the expiry of the period of 28 days after the day on which the instrument is signed before the registered medical practitioner; and
  - (b) that the form set out in the Schedule to the Enduring Powers of Attorney (Prescribed Form) Regulation (Cap. 501 sub. leg. A) (*the Regulation*) should be replaced.
2. Clause 3 amends section 5(2) of the principal Ordinance to give effect to the recommendation referred to in paragraph 1(a).
  3. Clauses 4 to 13 amend the Regulation and section 18(3) of the principal Ordinance to give effect to the recommendations referred to in paragraph 1(a) and (b) and to make consequential and related amendments.