

## Public consultation on proposed legislation on continuing powers of attorney starts today

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The Department of Justice (DoJ) today (December 28) launched a two-month public consultation to seek views on the proposed continuing powers of attorney legislation in Hong Kong.

A spokesman for the DoJ said, "It is proposed that a new Continuing Powers of Attorney Ordinance be enacted to extend the scope of an enduring power of attorney to include matters relating to the personal care of the donor."

The spokesman pointed out that according to the existing Enduring Powers of Attorney (EPA) Ordinance (Cap. 501), an EPA is a legal instrument which allows its donor (i.e. the person who gives a power of attorney in favour of someone), while he or she is still mentally capable, to appoint attorney(s) to take care of the donor's affairs in the event that he or she subsequently becomes mentally incapacitated.

While a general power of attorney will cease to be effective if the donor becomes mentally incapacitated, an EPA will "endure" the donor's mental incapacity and give the attorney(s) the power to continue to take care of the donor's affairs despite such incapacity.

At present, the powers which may be delegated under an EPA in Hong Kong are limited to decisions in relation to the property and financial affairs of the donor.

The Law Reform Commission of Hong Kong (LRC) published the report on "Enduring Powers of Attorney: Personal Care" (2011 Report) in July 2011. The report recommended the extension of the scope of an EPA to cover not only decisions on a donor's property and financial affairs, but also decisions on a donor's personal care.

Subsequently, the DoJ established an inter-departmental working group (IWG) to study the 2011 Report. The IWG includes members from the Labour and Welfare Bureau, the Food and Health Bureau and the Social Welfare Department.

"After careful consideration of the views and recommendations of the LRC and those provided by members of the IWG, it is proposed that a new Continuing Powers of Attorney Ordinance be enacted to replace the existing EPA scheme with a new regime known as the continuing power of attorney to distinguish it from an EPA created under the existing Enduring Powers of Attorney Ordinance," the spokesman added.

According to the said proposal, while new EPAs may no longer be created after the commencement of the Continuing Powers of Attorney Ordinance, EPAs executed prior to that would continue to be governed by the Enduring Powers of Attorney Ordinance.

The Consultation Paper on the Continuing Powers of Attorney Bill is now available on the website [www.doj.gov.hk/eng/public/pdf/2017/cpa\\_consult\\_e.pdf](http://www.doj.gov.hk/eng/public/pdf/2017/cpa_consult_e.pdf). Copies of the consultation paper are also available at the Public Enquiry Service Centres of the Home Affairs Department.

Members of the public are invited to submit their views to the Legal Policy Division of the Department of Justice by mail to 5/F, East Wing, Justice Place, 18 Lower Albert Road, Central, Hong Kong, or by email to [cpa@doj.gov.hk](mailto:cpa@doj.gov.hk). The consultation will end on February 28, 2018.

Ends/Thursday, December 28, 2017